

After Recording Return to:

**DECLARATION OF COVENANTS,
CONDITIONS & RESTRICTIONS & EASEMENTS**
For
Scarlet Ridge Subdivision
In Utah County, Utah

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND EASEMENTS FOR SCARLET RIDGE SUBDIVISION (this "Declaration") is made and executed as of the last date set forth in the notarized signature below, by Scarlet Ridge Partners, LLC, a Utah limited liability company (the "Declarant").

RECITALS:

(A) This Declaration will take effect on the date recorded at the office of the Utah County Recorder's Office (the "Effective Date").

(B) The Declarant is the record owners of certain real property located in Utah County, Utah and more particularly set forth in **Exhibit "A"** (the "Property").

(C) Declarant desires to subject the Property to the terms of this Declaration. Declarant intends to develop a residential subdivision on the Property pursuant to the Community Association Act, Utah Code Sections 57-8a-101, *et. seq.* Declarant will develop and convey all of the Lots within the Subdivision subject to a general plan of development, and subject to certain protective covenants, conditions, restrictions, and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Subdivision. Common Areas are those areas that are depicted in the recorded Plat(s), as amended, and as described in this Declaration. Declarant reserve the right to develop additional phases within the Property pursuant to the Community Association Act and this Declaration. The Subdivision does not constitute a cooperative.

(D) Declarant have deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas and otherwise administer and enforce the provisions of this Declaration. For such purposes, Declarant will cause to be registered with the Utah Department of Commerce Scarlet Ridge Homeowners Association, Inc. (the "Association").

(E) The Association is governed by the terms of this Declaration, the Articles of Incorporation for Scarlet Ridge Homeowners Association, Inc. ("Articles"), and the Bylaws for Scarlet Ridge Homeowners Association, Inc. ("Bylaws"), which Bylaws are attached hereto as **Exhibit "B"** and shall be recorded in Utah County Recorder's Office contemporaneously with the recording of this Declaration.

(F) Declarant declares that the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with each Lot located on the Property, including any additions thereto, and shall be binding upon all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, and its successors in interest; and may be enforced by the Association and the Declarant and their successors in interest.

(G) Notwithstanding the foregoing, no provision of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant' reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; (4) expansion or annexation of additional property, and (5) assignment of Declarant' rights under this Declaration in whole or part. This Declaration shall be binding upon the Declarant, as well as its successors in interest, and may be enforced by the Declarant or the Association.

(H) These Recitals are made a part of this Declaration.

COVENANTS, CONDITIONS AND RESTRICTIONS

ARTICLE I
DEFINITIONS

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

(A) "Act" means the Community Association Act, Utah Code Ann. Sections 57-8a-101 *et. seq.*

(B) "Architectural Control Committee" or "ACC" shall mean the Architectural Control Committee created by this Declaration, the Bylaws, and/or Articles. If no ACC is created, the Board shall assume those responsibilities.

(C) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as an assessment, special assessment, individual assessment, reserve assessment, capital improvement assessment, fine, late fee, or other charge.

(D) "Articles" shall mean the Articles of the Association, as amended from time to time.

(E) "Association" shall mean Scarlet Ridge Homeowners Association, Inc., and as the context requires, the officers or directors of that Association.

(F) "Board" or "Board of Directors" shall mean the duly elected and acting Board of Directors of the Association.

(G) "Bylaws" shall mean the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as **Exhibit "B."**

(H) "City" shall mean Eagle Mountain City, Utah and its appropriate departments, officials, and boards.

(I) "County" shall mean Utah County, Utah and its appropriate departments, officials, and boards.

(J) "Common Areas" shall mean all property designated on the recorded Plat(s) or described in this Declaration as Common Area, being intended ultimately to be owned by the Association for the common use and enjoyment of all Owners, together with all improvements thereon and all of the easements appurtenant thereto, including, but not limited to: any detention basin(s), private utility lines (not owned and maintained by the City/County), community signage, community pathways, parks/open space and facilities.

(K) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) providing facilities, services and other benefits to Owners as set forth in this Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments, charges, fines, penalties and liens imposed pursuant hereto; (E) operating the Association; and (F) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act.

(L) “Declarant” shall mean and refer to Scarlet Ridge Partners, LLC, and its successors and assigns.

(M) “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions and Easements for Scarlet Ridge Subdivision, together with any subsequent amendments.

(N) “Dwelling” shall mean the single-family residence built or to be built on any Lot, together with all Improvements located on or with respect to the Lot concerned that are used in connection with such residence including, but not limited to: driveways, pipes, wires, conduits, or other public utility lines or installations constituting a part of the Dwelling or serving only the Dwelling shall be part of the Dwelling.

(O) “Governing Documents” shall mean this Declaration, Bylaws, Articles, Rules, and any other documents or agreements binding upon an Owner.

(P) “Improvement” shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, Dwellings, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(Q) “Lot” shall mean any numbered building Lot shown on any official and recorded Plat(s), including the Dwelling and all Improvements located thereon.

(R) “Manager” shall mean any entity or person engaged by the Board of Directors to manage the Project.

(S) “Member” shall mean and refer to every person who holds membership in the Association, including an Owner and the Declarant as set forth herein.

(T) “Owner” shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Utah County, Utah) of a fee simple or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term “Owner” shall not mean or include a mortgagee or a beneficiary of trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

(U) “Person” shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

(V) “Plat(s)” shall mean an official and recorded plat of “Scarlet Ridge Subdivision Phase A Plat 1”, including all subsequent phases when recorded, as approved by the City, and recorded in the office of the Utah Recorder, as it may be amended from time to time.

(W) "Property" shall have the meaning set forth in the Recitals.

(X) "Rules" mean any instrument adopted by the Board for the regulation and management of the Association as provided in the Governing Documents.

(Y) "Subdivision" or "Project" shall mean all phases of Scarlet Ridge Subdivision and all Lots, and other property within the Subdivision, as shown on the Plat(s) and any future Plat(s) covering the Property.

(Z) "Subdivision Improvements" shall mean all improvements to be installed outside the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and/or private road access and utility service to the Lots and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof.

ARTICLE II EASEMENTS

2.1 Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom, or encumbered, pledged, assigned, or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

2.2 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) The right of the Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area;

(b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.

(c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service.

2.3 Reservation of Access and Utility Easements. Declarant hereby reserve an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

2.4 Easements for Encroachments . If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or if any structure constructed by Declarant on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.5 Easements for Construction and Development Activities . Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Dwellings on Lots, (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots, or other property in the Project, (c) improvement of the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on

lands within, adjacent to, or serving the Property of roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

2.6 Easement in Favor of Association. The Lots and Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees, and independent contractors:

(a) For inspection, maintenance, repair and replacement of portions of the Common Area;

(b) For correction of emergency conditions on one or more Lots or on portions of the Common Area;

(c) For the purpose of enabling the Association, the Architectural Control Committee or any other committees appointed by the Association to exercise and discharge, during reasonable hours, their respective rights, powers and duties, including, but not limited to, inspection of Lots for possible violation of the Governing Documents of the Association;

2.7 Income Generated from Service Providers. Declarant, as owner of the real property at the time it is annexed into the Subdivision through recordation of a plat, which includes the dedication of certain utility easements to the City or County, may negotiate terms with service providers that desire to install infrastructure to provide services to owners in the Subdivision. During the Declarant' Control Period, any income gained from these negotiations with service providers by Declarant, including future revenue from services provided, may be retained by the Declarant or its assigns.

ARTICLE III COMMON AREAS & MAINTENANCE

3.1 Common Areas. The Common Areas consist of areas designated as Common Areas on the recorded Plat(s) or described in this Declaration, including any structures related to the operation or maintenance of the Common Areas, together with any rights of way and utilities, as shown on the recorded Plat(s). Notwithstanding anything contained in this Declaration to the contrary, all Common Areas appurtenant to each recorded Plat of the Project shall be conveyed to the Association upon recordation of a Plat depicting such Common Areas, reserving all easements as set forth in this Declaration.

(a) Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain all Common Areas, including, without limitation, the improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate. The Association shall have the authority to assess

its members for the costs of said maintenance in accordance with the terms of this Declaration.

3.2 Landscaping. The Association shall perform general landscaping maintenance within the Common Areas. The Association may adopt Rules to add further detail with regard specific landscape maintenance services provided by the Association.

3.3 Snow Removal. The Association shall make reasonable and prudent efforts to contract with a third party for the removal of snow from applicable Common Areas within the Subdivision, if any. The Association may adopt rules further governing snow removal.

ARTICLE IV OWNERS' MAINTENANCE OBLIGATIONS

4.1 Duty to Maintain. It is the obligation of each Owner to maintain his Lot, Dwelling and Improvements located thereon in a clean and sanitary condition, free of pests and rodents, and uncluttered at all times in order to preserve and enhance the enjoyment of the Project.

4.2 Repairs by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary, or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

4.3 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Board. No subsequent exterior alterations, improvements, or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Board. Declarant shall be exempt from this provision.

4.4 Repair Following Damage. In the event of casualty loss or damage to the improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Board, provided however that alterations or deviations

from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage before re-construction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. Unless delayed by City/County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

ARTICLE V MEMBERSHIP

5.1 Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner cease to have an ownership interest in the Lot. Upon the transfer of an ownership interest in a Lot the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Lot is held. Notwithstanding the foregoing, the Declarant shall also be granted voting rights as a Class "B" Member, as defined below.

ARTICLE VI VOTING

6.1 The Association shall have two (2) classes of voting membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Class "A" membership shall be entitled to one (1) equal vote for each Lot in which they are an Owner. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Association that Person shall be entitled to cast all votes appertaining to that Lot. But if more than one of such Person(s) is present, the votes appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Lot may not be divided between Owners of such Lot or with respect to matters before the Association, and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

(b) Class "B". The Class "B" Member shall be Declarant. In all matters requiring a vote, the Class "B" membership shall receive one hundred (100) votes for each recorded Lot owned by Declarant and one hundred (100) votes for each acre of undeveloped land subject to this Declaration. The Class "B" membership shall also be entitled to appoint the members of the Board and Association during the Class "B" Control Period.

ARTICLE VII
CONTROL PERIOD

7.1 The Class "B" Control Period runs until ninety (90) days after the first to occur of the following:

(a) When the total number of votes for the Class B Member is less than the total number of votes for the Class A Members; or

(b) When, at its discretion, the Class B Member so determines.

7.2 Notwithstanding anything to the contrary in this Declaration, Declarant may exercise its discretionary termination of control in whole or in part as to any portion of the Subdivision at its sole election and determination. In doing so as to a portion of the Subdivision, it does not waive any reversionary or remaining control as to all other portions of the Subdivision, the control of which is not expressly terminated by Declarant.

ARTICLE VIII
HOMEOWNER ASSOCIATION

8.1 Organization. The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners within the Project and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Lot and is transferable only in conjunction with the transfer of the title to the Lot. The Association shall serve as the organizational body for all Owners.

8.2 Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense; (6) terminate an Owner's right to utilize Common Area and/or

amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law.

(a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.

(b) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Document, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Lot(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

(c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

8.3 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses, and Common Expenses of the Association. The Association has the power to levy assessments against each Lot as necessary to carry out its functions. Assessments shall be levied against all Lots in the Property, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest, and costs of collection (including reasonable attorney fees), if and when applicable.

(a) All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners of such Lot at the time the assessment fails due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest, and costs of collection (including reasonable attorney fees) which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

(b) Special Assessment. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost

of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.

(c) **Individual Assessment.** The Association may levy individual assessments on every Lot, Owner or occupant that shall cause any damage to the Project or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance, or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Lot(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.

(d) **Reserve Fund.** The Association may levy a reserve fund assessment, as set forth in this article.

(e) The Association may levy other assessments or fees, as authorized by the Governing Documents.

8.4 **Budget.** The Board is authorized and required to adopt a budget annually, which shall be presented to the Owners.

(a) The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budget.

(b) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

(c) Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments.

8.5 **Reserve Fund Analysis.** Following the Class B Period, the Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing, or restoring Common Area that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis. No reserve fund analysis is necessary if the Association does not own Common Area.

8.6 Reserve Fund Account Creation. The Board shall create a reserve fund account that is separate and distinct from the Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Board's discretion, to fund the reserve account.

8.7 Reinvestment Fee. With the exception of those Lots conveyed by Declarant or Declarant Related Entities, which shall be exempt from the Reinvestment Fee, the Association shall levy a one-time reinvestment fee when a change in ownership of a Lot occurs in the amount set by the Board from time to time, not to exceed one-half of one percent (.05%) of the sale price of the Lot.

8.8 Date of Commencement of Assessments. Assessments provided for herein shall commence as to each Lot on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide. Notwithstanding, Assessments for those Lots owned by Declarant or their assigns, successors, subsidiaries, related construction entities, or other entities established by Declarant, or Declarant' members, for the purpose of constructing Dwellings on the Lot (collectively "Declarant' Related Entities") shall not commence until the completed Dwelling is conveyed to an Owner that is not the Declarant or a Declarant' Related Entity. No amendment of this Declaration changing the allocation assessments with regard to Declarant or Declarant Related Entities shall be valid without the consent of the Declarant.

8.9 Fines. Following notice as required by the Act, the Association shall have the power to assess a fine against an Owner (or their Lot) for a violation of the terms and conditions of the Governing Documents in an amount set by the Board.

8.10 Hearing Process. The Board shall have authority to create a reasonable hearing process, consistent with the Act, applicable when the Association takes an adverse action related to any particular Owner(s).

8.11 Association Rules . The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing: (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals in the Project; (e) collection policies and procedures; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents, as deemed necessary by the Board. The Rules may supplement, clarify, and add detail to issues addressed in Governing Documents. However, the Rules may not contradict the Governing Documents.

- (a) During the Class B Period, Declarant shall be exempt from the rule making procedure required by Utah Code § 57-8a- 217.

8.12 Statement of Account & Payoff Information. Upon a written request from an Owner that the Association provide the Owner with a statement of his/her account, the Association may charge a fee, not to exceed \$10.00, for providing such statements. In addition, when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Lot Owner's sale of his/her Lot, the Association may charge a fee not to exceed \$50.00.

8.13 Availability of Documents. The Association shall make appropriate documents available to Owners (and their lenders, insurers and/or authorized agents) consistent with the Act and the Utah Revised Non-Profit Act. The Board may adopt a record retention policy to govern its record retention procedures.

8.14 Indemnity of Association Board and Officers. The Association will indemnify the officers, agents, and Board of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties, and responsibilities of their office under the Governing Documents.

8.15 Election, Notice of Election, Notice of Meeting and Special Meetings. Election procedures and notice of any meeting shall be conducted as set forth in the Articles of Incorporation and Bylaws of the Association.

8.16 Number of Board, Term of Office. The appointment, election and term of the Members of the Board are set forth in the Bylaws and Articles. Members of the Board of Directors may serve consecutive terms and may also serve as officers of the Association.

8.17 Independent Accountant/Bookkeeper. The Association may retain the services of an independent accountant or bookkeeper to assist the Board of Directors and officers to maintain accurate financial records of the Association.

ARTICLE IX

NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE

9.1 Delinquent Assessment. Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

9.2 Due Date, Charges & Interest. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10th of each month. The Board may charge a late fee in an amount set by the Board. In addition to late fees, interest shall accrue on all unpaid balances at 18% per annum or 1.5% per month. The Board may also impose other reasonable charges imposed by a Manager or other third party related to

collections.

9.3 Lien. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Association.

9.4 Foreclosure. The Association shall have the power of sale and may pursue a non-judicial foreclosure of the property, as set forth in Utah law, including bidding for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Lot not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

9.5 Other Remedies. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Lot(s), and/or other obligees jointly and severally.

9.6 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Lot, the amount of any assessment that is more than sixty (60) days past due.

9.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring, and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Lot(s).

9.8 Appointment of Trustee. The Declarant hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Burt R. Willie, Esq., a licensed member of the Utah State Bar, with power of sale, the Lot, and all Improvements to the lot for the purpose of securing payment of assessments under the terms of this Declaration.

ARTICLE X
SUBORDINATION OF LIEN TO INSTITUTIONAL
FIRST AND SECOND MORTGAGES

10.1 The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second mortgage of record made in good faith and for value, recorded prior to a recorded notice of lien by the Association. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a prior, recorded institutional first or second mortgage shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer; provided, that to the extent there are any proceeds of the sale on foreclosure of such mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such mortgage, the lien shall apply to such excess. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee holding an institutional first or second mortgage of record or other purchaser of a Lot obtains title pursuant to remedies under the mortgage, its successors and assigns shall not be liable for the share of the assessments by the Association chargeable to such Lot that became due prior to the acquisition of title to such Lot by such acquirer. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale, or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale, or transfer.

ARTICLE XI USE LIMITATIONS & RESTRICTIONS

11.1 Single Family. All Lots shall be used only for single-family residential purposes. "Single Family" shall mean one household of persons related to each other by blood, marriage, or adoption, or one group of not more than two unrelated persons per bedroom. Notwithstanding, subject to approval under Article 12, and as permitted by local zoning ordinances, each lot may include one mother-in-law apartment or detached apartment dwelling with ACC approval. Any such detached dwelling is in addition to any Accessory Dwelling Unit, as that term is used in the Act, which is allowed by law and meets zoning requirements.

11.2 Zoning Regulations. The lawfully enacted zoning regulations of the City and/or County, and any building, fire, and health codes are in full force and effect in the Project. No Lot may be occupied in a manner that is in violation of any statute, law, or ordinance.

11.3 Acceptable Business Uses. No portion of the Subdivision may be used for any commercial business use. Notwithstanding, nothing in this provision is intended to prevent (a) the Declarant, or other builders, from using one or more Lots for purposes of a construction office or sales office during the actual period of construction of the Subdivision Improvements or until 100% of the Lots are sold in the Subdivision, whichever occurs later; or (b) the use by any Owner of his Lot for a home occupation pursuant to City or County ordinance. Businesses, professions, or trades may not: require heavy equipment, create a nuisance within the Project, or unreasonably increase the traffic flow to the Project.

11.4 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot or the Project, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots. No Owner or occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body.

11.5 No Hazardous Activity. No activity may be conducted on any Lot that is or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners' insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive, or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than property supervised and contained).

11.6 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation: the open storage of any building materials, construction equipment, or construction debris (except during authorized construction of an Improvement); accumulations of debris or waste; and the storage or accumulation of any other material that is unsightly.

11.7 No Annoying Lights. No outdoor lighting shall be permitted except for lighting that is designed to aim downward and reasonably limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by the City and/or County. Holiday or seasonal decorative lights, that otherwise comply with the terms of the Governing Documents, are permitted.

11.8 Signs. No signs whatsoever shall be erected or maintained on any Lot, except:

- (i) Such signs as may be required by legal proceedings or Utah law;
- (ii) Construction identification signs 2 feet by 3 feet or less for each Dwelling;
- (iii) A "For Sale" or "For Rent" sign, not more than 2 feet by 2 feet, and consistent with other requirements adopted by the Board.

11.9 Trash Containers and Collection. All garbage, trash and recycling shall be placed and kept in covered containers as provided by the local collection agencies. Insofar as possible, such containers shall be maintained as not to be visible from neighboring Lots. The Board may adopt further rules and policies governing trash containers and collection.

11.10 Animals. No animals other than those allowed under local zoning ordinance may be kept or allowed on any Lot, in any Dwelling, or within any part of the Common Areas. Whenever a pet is allowed to leave a Lot, it shall be kept on a leash or in a cage. No animals may be bred for commercial purposes. There shall be no exterior structure for the care, housing, or confinement of such pets. It is prohibited to leave unattended pet food outside of the Dwelling because this attracts insects, mice, rats, and other undesirable creatures. All pets shall be kept on a leash or within an approved fenced area on the Owner's Lot. Pet owners will pick up any droppings by their pets and

dispose of them in their trash cans. Anyone wishing to report a violation of the above rules should attempt to photograph or find a witness to observe the violation and to identify the animal. For repeated violations, the owner will be required to remove the pet from Project. If a pet damages or destroys the property of another, the pet owner will be required to repair or replace the damaged property. If a pet bites or otherwise injures anyone in Project, the pet owner will be liable for all medical, hospital and other costs AND will be required to remove the pet permanently from the Project. Any Owner or other resident within the Project who violates this provision shall be subject to such penalties, fines, and/or legal action. The Association may adopt further rules and policies for management of pets in the Project, including procedures for approval of service/assistance animals. Livestock may be allowed within the Lot as long as the keeping of livestock does not violate City ordinances.

11.11 Vehicles, Trailers & Recreational Equipment. That Association may adopt rules governing the parking and storage of vehicles, trailers, recreational and other types of equipment in the community.

11.12 Firearms, Incendiary Devices and Graffiti. The use of firearms, incendiary devices, or graffiti within the Project is prohibited. The term firearms include, but is not limited to: all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, air-soft guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size. Notwithstanding, this provision is not intended to regulate the ownership of firearms, or the carrying of a firearm to and from an Owner's Dwelling, as otherwise authorized by Utah law.

11.13 Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated, or maintained in or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Dwelling.

11.14 Clothes Lines and Materials. No clothes lines, clothing racks, or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing shall be located on the Property except within a Dwelling, unless in an area reasonably screened from public view. No rugs, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any other part of a Unit unless in an area screened from public view.

11.15 Satellite Dishes. Owners are encouraged to use cable service for television and Internet. Satellite dishes and antennas not regulated by the FCC are prohibited. Satellite antennas, such as Direct Broadcast Satellite ("DBS") antennas/dishes, one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; provided the dish and any wires are installed so as to not be visible from the streets. If locating the dish so that it is not visible from the streets precludes reception of an acceptable quality signal, the dish shall be installed with the least visibility from the streets possible. Location of an FCC approved dish may not be restricted by the ACC so as to cause unreasonable delay in installation; unreasonably

increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the property of another Owner. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. The terms "dish" and "antenna" are to be used interchangeably in interpretation of the above policy.

ARTICLE XII
DESIGN REVIEW

12.1 Purpose. It is the intention and purpose of this Declaration to impose architectural standards on the improvements and landscaping on any Lot of a type and nature that result in buildings and yards which are architecturally and aesthetically compatible in terms of lot coverage, proportion, materials, colors, and general appearance. To accomplish this goal, the Declarant, during the Class B Control Period, and Board (and ACC if created) thereafter are empowered to oversee and enforce the Design Guidelines, which are contained within a separate document maintained by the Board.

12.2 Approval by Board Required. No Improvements of any kind will be made on any Lot without the prior written approval of the Board. Approval of the Board will be sought in the following manner:

(a) Plans Submitted. A complete sets of the plans for the construction of any new Dwelling or Improvements must be submitted to the Board for review. In the case of an addition or modification of an existing Dwelling, the Board may waive in writing any of the foregoing it feels are unnecessary to its review of the remodel or addition.

(b) Review. Within 30 days from receipt of a complete submission, the Board will review the plans and make an initial determination whether or not the plans comply with the conditions imposed by the Declaration. If they do not, the plans will be rejected. If they are in compliance, the Board will approve the plans. The Board may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The Board will review preliminary plans, and make its comments known to the Owner provided; however, that no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission. Upon approval, the Board will sign a copy of the plans, one of which shall be left with the Board. No construction that is not in compliance with the approved plans will be permitted.

(c) Failure to Act. If the Board has not approved or rejected any complete submission within 45 days after submission of complete plans for all Improvements to be built on a Lot, the submission is deemed to have been disapproved. If the plans are disapproved as a result of the Board's failure to act, then the applicant may send, by certified mail, return receipt requested, notice to any member of the Board that if the plans

are not either approved or disapproved, as submitted, within 15 days from the date the notice is MAILED, then the plans will be deemed to be approved. If within such 15 day period, the Board fails to respond to the notice by either approving or disapproving the plans, then the plans will be deemed to have been approved; provided, however, that the submission and Improvements do not, in fact, violate any conditions imposed by this Declaration.

12.3 Variances. Variances to the Design Guidelines may be granted when strict application would create an unforeseen or unreasonable hardship to the Owner of any Lot; provided, however, that any variance granted is consistent with the intent of this Declaration and the Design Guidelines. The Board cannot grant any variance that has the effect of modifying applicable zoning or building code regulations. The burden of obtaining a variance is entirely on the applicant.

12.4 General Design Review. The Board will use its best efforts to provide a consistent pattern of development, and consistent application of standards of this Declaration and the Design Guidelines. These standards are, of necessity, general in nature, and it is the Board's responsibility to apply them in a manner that results in a high quality, attractive and well-designed community.

12.5 Architectural Review Fee. An architectural review fee may be charged in an amount determined by the Board that reflects the actual cost incurred by the Board.

12.6 Declarant, Board and Committee not Liable. The Declarant, the Board, and the Board and its members shall not be liable to the applicant for any damages, or to the Owners of any Lots within the Subdivision for their actions, inactions, or approval or disapproval of any set of plans submitted to the Board for review. The Owners shall have no claim against the Declarant or Board as a result of the performance or failure to perform the duties created by this Declaration. Each Owner has an equal duty and right to enforce these covenants against every other Owner and may seek independent redress if it believes the Board has acted improperly.

12.7 Limitations on Review. The Board's review is limited to those matters expressly granted in this Declaration. The Board shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable codes must be approved by the Board prior to construction.

12.8 Exemption of Declarant. At any time during the Class B Control Period, Declarant need not submit or receive any approval from the Board.

ARTICLE XIII

GENERAL ARCHITECTURAL RESTRICTIONS ON IMPROVEMENTS

13.1 Design Guidelines. Any improvements shall minimally comply with the following standards and any additional design rules approved by the Association. During the Period of Administrative Control, Declarant may, at Declarant's option, adopt Design Standards for each separate phase of the Project, and each Phase Design Standards may differ in materials, style, and other relevant information related to the overall look and appearance of that phase, even if no sub-associations are created for that phase. In the event any provision found in the Design Standards conflict with any provision found in this Declaration, the design standard in this Declaration shall control.

13.2 Landscaping. The Association shall adopt rules supporting water-efficient landscaping, including allowances for low water use on lawns during drought conditions. Front and side yard landscaping, executed in strict accordance with a previously approved landscaping plan shall be completed prior to issuance of Occupancy Certificate. If completion of construction or occupancy occurs during winter months, landscaping must be completed by the first day of the month of July next to occur. All front yard and, in some cases, other areas shall be landscaped in accordance with plans approved by the ACC and thereafter carefully maintained. All lots shall be kept free from any plant materials infected with noxious insects or plant diseases that in the opinion of the ACC are likely to spread to other property, and all lots shall be kept free from weeds. The builder shall be responsible for the installation of park strip trees, front yard sprinkler system, and turf / lawn, and ornamental trees and shrubs, within the time limits specified herein, and any subsequent property owner will be held responsible for the completion of the balance of landscaping within the time limits specified herein. Violation of the requirements specified herein will be subject to a fine of Fifty Dollars (\$50.00) per calendar day, calculated from the due date of completion, as specified herein, to the actual date of completion.

13.2 Front and Side Yard Landscaping. Front and side yard of a Lot is defined as the area of the lot beginning at the front property lines on any adjacent public street or roadway to a distance at least ten feet behind front corners of the residence from such public street or roadway. All park strip areas shall be landscaped as specified herein. If the lot is on a corner of two or more public streets or roadways, then the side yard adjacent to the public street or roadway all the way to the rear corner of the home shall be included in the area to be landscaped. Side yards shall be landscaped from the front corner of the home to at least 10' toward rear of home. All areas defined herein shall be planted or sodded or otherwise maintained in a natural and native material or setting as approved by the ACC and shall be included in any landscape plan submitted to the ACC for approval. All such areas shall be irrigated as necessary and cut or maintained to reflect a weed-free and attractive appearance.

- A. Front lawns shall have minimum turf coverage of 50 percent. Corner lots shall have up to 75 percent turf coverage. Greater percentages of turf coverage are permitted if drought tolerant turf grasses are used. All turf areas shall be permanently irrigated with an automatic irrigation system. No lawn or turf shall be required in an area of

landscaping with less than eight feet in width for planting, but the ACC may require alternate water friendly landscaping in such areas.

- B. Planting beds shall be 25 percent covered by plant material at the time of installation. After three (3) years, plants shall cover 50 percent of the planting beds. Seasonal flowers shall qualify as cover.
- C. Marble chips, volcanic rock, or high contrast stone patterns (i.e., red, green, white, and black) shall not be allowed. Natural earth tone stone material, such as washed river rock, may be used.

13.3 Trees and Shrubs. When a Lot is improved with a dwelling and is landscaped, the following criteria for tree planting shall be followed in the front yard:

- A. A minimum of three (3) trees shall be planted on the Lot within the time outlined in Section 5.2.
- B. Of the three (3) trees minimum to be planted, at least one (1) deciduous trees with a minimum two (2) inch caliper (the diameter of the tree ten (10) inches above the top of root-ball), shall be planted. The species of these trees and the plantings shall be as per City requirements along the front property line.
- C. Of the three (3) trees, one (1) additional deciduous trees of a minimum one and one-half (1 1/2) inch caliper shall be planted elsewhere on the Lot
- D. Of the three (3) trees minimum to be planted, at least an additional evergreen tree of at least five (5) ft. in height (measured from the top of the root-ball to the top of the tree) shall be planted.
- E. A minimum of ten (10) shrubs shall be planted on the Lot within the time outlined in Section 8.02.
- F. Of the ten (10) shrubs planted, each must be no smaller than 5 gallon size.
- G. The ACC reserves the right to waive or amend this requirement according to lot size.

13.4 Rear Yard Maintenance. The rear yard of each lot is to be landscaped and or fenced within 180 days from the date of occupancy or final inspection, whichever occurs first. During the first 180 days of occupancy the rear yard is to be maintained in, approved landscaping, native vegetation, grasses, gardens, irrigated pasture, crops, etc. Such is to be tended, mowed, etc., to keep the rear yard free of weeds, trash, debris, or any unsightly condition. The height of any growth, other than landscaping, shall not exceed twelve (12) inches except in the case of natural sagebrush, trees, and agricultural crops which shall be harvested in a timely manner.

13.5 Fencing. All fencing shall be approved by ACC prior to installation. No barbed wire fencing, field fencing, or chain-link is permitted for lot boundary or perimeter fencing. Fencing in the front yards, bordering trail easement, improved open space or trail shall be split rail, open rail, or another open style fencing other than barbed wire, field fencing, or chain-link fencing. Privacy fencing in the front yards, bordering trail easements or bordering open improved open space is prohibited. Privacy fencing in the back yard or side yard areas shall be setback at least 15 feet from the edge of the trail easements or improved open space areas. All fencing shall be installed as to not obstruct the clear vision area or "triangle" as provided for in Eagle Mountain

City Development Code. Field fencing may only be used for small animal enclosures located entirely within the Lot and outside of all setbacks, and as approved by the ACC.

13.6 Property Line Setbacks. Dwellings and outbuildings that include any human living space shall have at minimum 25 foot front and rear setbacks, 30 feet to the garage, 10 foot minimum side setbacks and a total combined side yard setback of 20 feet, and 25 foot side setbacks where the side faces a street. Outbuildings that do not include any human living space shall have a 20 foot side and rear setback, a 15 foot side and rear setback bordering any street, and a 20 foot side or rear setback bordering any open space, trail, or easement. RV's, trailers, and other recreational vehicles shall not be parked in the front of the Living Unit, or within the side setback of the Living Unit where the side faces a street unless shielded from view in a manner acceptable to the ACC. If City zoning and ordinances requires a larger setback for elements set forth above, City requirements shall control the size of all setbacks.

13.7 Dwelling Square Footage. Single story Dwellings shall have a minimum of 1,900 square feet above grade. Two story Dwellings shall have a minimum of 2,300 square feet above grade. The ACC may consider single story Living Units as small as 1,800 square feet if the elevations have significant movement, fenestration, and articulation. No minimum square footage shall be required for detached mother-in-law

13.8 Exterior Materials – Colors and Styles. All exterior surfaces of any building shall be of materials and of colors approved by the ACC. A variation of materials shall be used with a preference given to stone, rock, masonry siding, vertical masonry siding, shake designs and stucco. No structure may have aluminum or vinyl siding. No structures may be constructed of logs.

6.6 Roofs. With the exception of shed roofs, all Dwelling roofs shall have a minimum 6/12 pitch. The ACC may in its reasonable discretion, grant a variance to an Owner allowing installation of minimum 3/12 pitch. An Owner desiring such a variance shall submit a copy of the plans to the ACC along with a written statement from an architect or other contractor professional describing how and why the reduced pitch is being used for design and aesthetic purposes. The ACC shall have the discretion to request and consider any other information it considers relevant when deciding to grant a variance and may deny a variance based on any reason. Outbuilding roofs shall have a minimum 3/12 pitch. Membrane roof surfaces and the like are prohibited.

6.7 Garages. All Dwellings shall have a minimum of 3 car garage, attached or unattached.

6.8 Driveways. Driveways shall be constructed of hardscape (concrete, asphalt, or pavers). The entire driveway accessing the Living Unit, together with the apron outside the garage shall be hardscape. Driveways accessing outbuildings may be rolled road base, crushed fines, or gravel, provided the first 30 feet from the street is hardscape, and the balance of the driveway is kept free of weeds and other growth.

6.9 New Construction. All dwelling units shall be of new construction. No other

building may be moved onto a Lot without the prior written approval of the ACC.

6.10 Storage of Building Materials. No building materials shall be stored on any Lot except temporarily during construction of an improvement or its alteration, renovation, or remodeling, and then only when a building permit is in force. Placement of a dumpster during construction is required by the City.

6.11 Temporary Structures. No trailer, mobile home, tent, shack or other temporary building, improvement or structure shall be placed upon any property without the prior approval of the ACC and Eagle Mountain City except that temporary structures necessary for storage of tools and equipment and for office space for architects, sales personnel, builders and foremen during actual construction may be maintained with the prior approval of the ACC and Eagle Mountain City, with such approval to include the nature, size and location of such structure.

6.12 Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with, or prevent normal construction of improvements by any Owner, provided that when completed such improvements shall in all ways conform to this Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs, or similar activities, provided that such construction is pursued to completion with reasonable diligence and is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision, including but not limited to any provision prohibiting temporary structures, may be granted by the Design Review Committee, provided that such waiver shall be only for the reasonable period of such initial construction. Such waiver may, but need not, be recorded or in recordable form.

ARTICLE XIV RENTAL RESTRICTIONS

14.1 Rental/Lease Restrictions.

- (a) An Owner may not lease less than the entire Dwelling for an otherwise qualifying Dwelling.
- (b) Subleasing shall not be allowed except for Accessory Dwelling Units ("ADU") as allowed by Utah law and the Act, and only in accordance with Utah law and City ordinances. If an ADU cannot be constructed in accordance with Utah law and City ordinances, and if allowed by City ordinance and zoning rules, Owner may construct one accessory apartment in a separate outbuilding not connected with the main Dwelling. If an ADU or external accessory apartment is constructed on the Lot, Owner must occupy as Owner's primary residence, either the main dwelling, ADU, or external accessory apartment.

- (c) Violations of the provisions of this Article shall result in the imposition of fines, as well as other legal action.
- (d) The Owner(s) of a Dwelling shall be responsible for the occupant's or any guest's compliance with the Governing Documents. In addition to any other remedy for noncompliance with this Declaration, the Association, following notice to the Owner, shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending non-owner occupant. The Association, Board, and the Manger shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph. For purposes of this subparagraph, each Owner in accepting the deed to a Dwelling expressly consents to such authority and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments and pursue any and all remedies available to remove the offending non-owner occupant.
- (e) Permitted Rules. The Board of Directors may adopt Rules requiring:
 - (i) Reporting and procedural requirement related to non-Owner occupied Dwellings and the occupants of those Dwellings, including requiring informational forms to be filled out by Owners and/or residents identifying non-owner occupants, vehicles, phone numbers, etc.; and
 - (ii) Other reasonable administrative provisions consistent with, and as it deems appropriate to enforce, the requirements of this Declaration.

ARTICLE XV INSURANCE

15.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by the Act. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

15.2 Property Insurance.

(a) Hazard Insurance.

(i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas.

(1) At a minimum, any required blanket policy shall afford protection

against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, theft, and storm water run-off, if reasonably available; and (2) all perils normally covered by "special form" property coverage.

(2) Any blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(b) Flood Insurance. If the property insured by the Association is not situated in a Special Flood Hazard Area, the Association may nonetheless, if approved by a majority of Owners, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

(c) Earthquake Insurance. The Association may nonetheless, if approved by a majority of Owners, purchase earthquake insurance to cover earthquakes not otherwise covered by blanket property insurance.

(d) Associations Obligation to Segregate Property Insurance Deductible. The Association shall keep an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(e) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible the Association need not tender the claim to the Association's insurer.

15.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

15.4 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy shall:

(a) Include coverage for volunteers and employees;

- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and
- (d) Provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

15.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds that shall:

- (a) Provide coverage for an amount of not less than the sum of three months regular assessment in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and
- (b) Provide coverage for theft or embezzlement of funds by:
 - (i) Officers and Board of Directors member of the Association;
 - (ii) Employees and volunteers of the Association;
 - (iii) Any manager of the Association; and
 - (iv) Officers, directors, and employees of any manager of the Association.

15.6 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association; and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Dwellings. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

15.7 Owner Act Cannot Void Coverage under Any Policy. An Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

15.8 Waiver of Subrogation against Owners and Association. All property and CGL

policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

15.9 Owners' Individual Coverage. **EACH OWNER SHOULD PURCHASE INDIVIDUAL INSURANCE COVERAGE FOR THEIR LOT IN THE AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT.**

ARTICLE XVI DAMAGE & DESTRUCTION

16.1 Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

16.2 Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

16.3 In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

ARTICLE XVII DISBURSEMENT OF PROCEEDS

17.1 If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided.

Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner(s) shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account.

ARTICLE XVIII
REPAIR AND RECONSTRUCTION

18.1 If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

ARTICLE XIX
CONDEMNATION

19.1 Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of members representing at least sixty-seven percent (67%) of the total Association vote by any authority having the power of condemnation or eminent domain), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Owners representing at least sixty-seven percent (67%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE XX
MISCELLANEOUS PROVISIONS

20.1 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance and is subject to abatement by the Declarant or Association.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by an Owner or by the Association. In

any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state, or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

20.2 Association Litigation.

(a) In recognition of the expenses and disruption associated with litigation, the Association shall not commence a judicial or administrative proceeding without the approval of the Declarant for so long as the Members govern the Association and thereafter only upon the approval of Owners representing at least 80% of the total vote of the Association.

(b) Neither the Association nor any Owner shall institute an action against any person which arises out of an alleged defect in the development of the Subdivision until: (i) Declarant and the person(s) who physically constructed the portion of the subdivision in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect or other portions of the Subdivision (provided, however, that the terms of this Section shall not create an obligation of any person to effect a repair of an alleged defect); (ii) the Association or Owner(s) have pursued their remedies under any express warranty covering all or any portion of the alleged defect; (iii) the Declarant and the affected contractor(s) have been given the opportunity to be heard at a meeting of the Association regarding the alleged defect; and (iv) all proposed parties to the action have been given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation.

(c) Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant' contractors, or any other person or entity involved in the construction of the Dwellings unless and until all of the following requirements have been satisfied:

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

(ii) The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget.

(d) If any claims or actions falling within the scope of this Section are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. Individual Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

(e) No action affected by this Section shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorney's fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action.

(f) This Section shall not apply to: (i) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or, (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of an express contract with the Association or its manager for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

20.3 Repurchase Option for Construction Defect Claims. In the event any Owner shall commence action against Declarant or Declarant' Related Entities for the purpose of constructing Dwellings on the Lot (collectively "Declarant") in connection with any alleged construction

defects in such Owner's Dwelling, Declarant shall have the option, but not the obligation, to purchase such Dwelling on the following terms and conditions:

(a) The purchase price shall be an amount equal to the sum of the following, less any sums paid to such Owner under any homeowner's warranty, in connection with the alleged defect:

(i) The purchase price paid by the original Owner of the Dwelling & Lot when originally purchased from Declarant;

(ii) The agreed upon value of any improvements made to the Dwelling by anyone other than Declarant; and

(iii) The Owner's reasonable moving costs.

(b) Close of escrow shall occur not later than forty-five (45) days after written notice from Declarant to the Owner of Declarant's intent to exercise the option herein.

(c) Title shall be conveyed to Declarant free and clear of all monetary liens and other encumbrances other than non-delinquent real estate taxes.

(d) Exercise of the repurchase option as provided for herein above shall constitute full and final satisfaction of all claims relating to the subject Dwelling and Lot. The Owner shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

(e) Declarant's option to repurchase granted herein with respect to any particular Dwelling and Lot shall automatically terminate upon the expiration of the last applicable statute of limitations applicable to any construction or warranty claim governing such Dwelling and Lot including all applicable tolling periods.

20.4 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Declaration, this Article and its subsections may not be amended except with the prior written consent of the Declarant during the Class B Control Period.

20.5 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

20.6 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Dwelling, each Owner or Occupant consents to the rights reserved to

the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

20.7 No Representations and Warranties. Each Owner and occupant understand, agrees, and acknowledges through taking title or residing in the Project that the Declarant, Association, and the Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Project.

20.8 Amendment. At any time while this Declaration is in effect, the covenants herein contained can be modified by the Declarant or Declarant's successors and assigns during the Class B Control Period at the sole discretion of the Declarant. Thereafter, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty (60%) percent of the total votes of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

20.9 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against his/her Lot, whether or not there is any reference to this Declaration in the instrument by which he/she acquires interest in any Lot.

20.10 Notices. All notices under this Declaration are provided as set forth in the Bylaws.

20.11 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

20.12 Right to Modify Lot Boundaries and Interior Boundary Lines. Declarants reserve the unilateral right to modify Lot boundaries and interior boundary lines and/or combine Lots or Dwellings so long as it owns the Lots; provided, however, such changes may not extensively alter the boundaries of the Common Area and Facilities nor change the percentages of ownership

interest.

SIGNATURES ON NEXT PAGE

Exhibit "A"
Legal Description

Utah County Parcel Numbers: 59-019-0004 and 59-019-0005


Legal Description: THE EAST ½ OF THE EAST ½ OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN (TAX ID NOS. 59:019:0004 AND 59:019:0005) AS RECORDED IN THE RECORDER'S OFFICE, UTAH COUNTY, STATE 
UTAH.

Exhibit "B"
Bylaws