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WHEN RECORDED, RETURN TO:

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Jeffery Smith
Utah County Recorder
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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HIGHLAND OAKS
A Residential Development

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "Declaration") is made on the date evidenced below by Mercer Oaks, LLC, a Utah limited liability company (hereafter "Declarant").

RECITALS

A. The Declarant is the owner of certain land located in Utah County, State of Utah, particularly described in the attached **Exhibit A** (the "Property"), and known generally as the Highland Oaks subdivision.

B. Declarant intends to develop the Property subject to this Declaration as a unified and harmonious development consisting of residential detached single family homes; accordingly, Declarant has adopted, imposed and subjected the Property described to certain covenants, conditions, restrictions, easements, charges and liens, as set forth below, for the following primary purposes:

(1) To ensure a uniform plan and scheme of development and uniformity in the development of the Property, and

(2) To preserve the value of the Property through the creation of a homeowners association to be delegated and assigned the powers of maintaining and administering common areas and other improvements, and enforcing all applicable covenants and restrictions, and collecting and disbursing assessments and charges, upon the Property, all as further set forth below in this Declaration.

D. The Project is not a condominium or cooperative project.

NOW, THEREFORE, the Declarant declares as follows:

ARTICLE I - DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.1 “Act” means the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, or any successor statute, as the same shall be amended from time to time.

1.2 “Additional Land” means any land that may be annexed to this Declaration thereby expanding the community in the manner set forth in Article III.

1.3 “Architectural Control Committee” means the committee established pursuant to Section 5.1.15 of this Declaration.

1.4 “Assessment” means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of the Governing Documents or applicable law, including (1) annual assessments; (2) special assessments; and (3) individual assessments as set forth below.

1.5 “Association” means the Highland Oaks Homeowners Association, or any successor incorporated or unincorporated association of the Lot Owners acting under this Declaration.

1.6 “Board of Directors” means the Board of Directors of the Association.

1.7 “Bylaws” means the Bylaws of the Association as they may exist and/or be amended from time to time.

1.8 “Common Area” means, refers to, and includes: (a) The real property and interests therein, excluding all Lots as defined herein, which comprise the Project; (b) All common areas and facilities designated as such on the Plat or elsewhere in this Declaration; (c) All installations for and all equipment connected with the furnishing of the Project’s utility services and existing for common use, such as electricity, gas, water and sewer, except as otherwise provided herein; (d) In general, all apparatus, installations and facilities included within the Project and existing for common use; and (e) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management. Effective upon recording of the Plat and this Declaration, the Declarant quitclaims all of the Declarant’s right, title and interest in and to the Common Areas to the Association, and the Common Areas shall be owned by the Association.

1.9 “Common Expenses” means expenses of administration, maintenance, repair, or replacement of the Common Areas and the areas designated ROW A and ROW B on the Highland Oaks Phase 1 Final Plat, and the expenses incurred by the Association in carrying out the responsibilities and duties mandated by the Governing Documents, including, without limitation, fulfilling all obligations of the Association under any agreements entered into by the Association.

1.10 “Community” means the Project and all of the Property, plus any Additional Land (if any).

1.11 "Community Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing in the Community, as set forth in this Declaration, the Bylaws and as defined or determined by the Board from time to time.

1.12 "Declarant" means Mercer Oaks, LLC, a Utah limited liability company, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Community; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.

1.13 "Detached Home" means a single-family residential dwelling unit which is not attached to another dwelling unit and is constructed upon a numbered Lot reflected on a Plat.

1.14 "Fine" means any charge levied against a Lot Owner for violations of any of the Governing Documents. Fines shall be enforced and collected consistent with the Act and the Governing Documents, and may be collected as an unpaid assessment.

1.15 "Governing Documents" means any and all written instruments by which the Association and/or Architectural Control Committee may exercise powers or manage, maintain, or otherwise affect the Community, including Articles of Incorporation, Bylaws, Plat, this Declaration, rules and regulations, and architectural or design guidelines.

1.16 "Improvements" means every structure or improvement of any kind, including but not limited to landscaping, sprinkler pipes, Living Units, decks, porches, awnings, fences, garages, carports, accessory buildings, driveways, storage compartments or other products of construction efforts on or in respect to the Community (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

1.17 "Include," "includes," or "including" means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.

1.18 "Lot" means any subdivided parcel of land upon which a Living Unit could be constructed in accordance with applicable ordinances and laws, or is already constructed, shown upon the Plat as existing for private use and ownership, including any Improvements on that land.

1.19 "Living Unit" or "Residence" shall mean a single-family residential dwelling unit constructed upon a Lot.

1.20 "Manager" or "Managing Agent" means the person or entity retained by the Association to manage the Community according to the direction of the Board of Directors.

1.21 "Mortgage" means any mortgage or deed of trust encumbering any Lot and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.

1.22 "Mortgagee" means the person or entity secured or benefited by a Mortgage.

1.23 “Owner” means the record owner of fee simple title to any Lot, as shown in the records of the County Recorder, but does not include a tenant, contract purchaser, or holder of a leasehold interest or person holding only a security interest in a Lot.

1.24 “Period of Administrative Control” means the period during which the Declarant (or a successor in interest) retains authority to appoint or remove members of the Board and is the time between the date of recordation of this Declaration and the date on which administrative control of the Association is turned over to the Owners pursuant to Section 7.1 below.

1.25 “Plat” means the Highland Oaks Phase 1 Plat recorded, or to be recorded, at the Recorder's Office of Utah County, state of Utah, as the same may be amended or substituted, together with any plat subsequently recorded for an additional phase of the Project.

1.26 “Property” or “Project” means all of the real property, and appurtenant interests, particularly described in the attached **Exhibit A**, including all Lots, Common Area, easements, and open space.

1.27 “Rules and Regulations” means those rules and regulations adopted by the Board from time to time that are deemed necessary or prudent by the Board for the enjoyment, operation or governance of the Community.

1.28 “Turnover Meeting” means the meeting at which the Declarant turns over administrative control of the Association to the Owners pursuant to this Declaration, after expiration of the Period of Administrative Control.

ARTICLE II - PROPERTY DESCRIPTION

2.1 Property Subject to the Declaration and Bylaws. The real property which is, and shall be, transferred, held, sold, conveyed, used, occupied and improved subject to the Act and to this Declaration, the Governing Documents, and all agreements, decisions and determinations made by the Board or Association is all of the real property described on the Plat and on **Exhibit A** attached hereto, which Declaration and covenants, conditions and restrictions shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Community or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Community or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of each Owner thereof. To the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control.

2.2 Description and Legal Status of Lots. Except as otherwise stated herein, the Plat shows the Lots and the Common Areas, and their locations and dimensions from which, together with the Definitions above, those areas may be determined. All Lots shall be capable of being independently owned, encumbered, and conveyed.

2.3 Form of Lot Conveyance - Legal Description of Lot. Each conveyance or installment contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the number shown on the Plat with appropriate reference to the Plat and to this

Declaration, as each shall appear on the records of the Utah County Recorder, State of Utah, and in substantially the following form:

Lot ____, shown on the Highland Oaks Phase 1 Final Plat, recorded on _____, 2016 as Entry No. ____, in the official records of the Utah County Recorder, and as identified in the Declaration of Covenants, Conditions and Restrictions recorded on _____, 2016, as Entry No. ____ of the official records of the Utah County Recorder, as may be amended, and the Plat. This conveyance is subject to the provisions of the Declaration of Covenants, Conditions and Restrictions, as amended.

2.4 Use and Occupancy. Except as otherwise expressly provided in this Declaration or the Bylaws, the Owner(s) of a Lot shall be entitled to the exclusive use and benefits of ownership of such Lot. Each Lot and Living Unit, however, shall be bound by, and the Owner shall comply with, the restrictions contained below and all other provisions of the Governing Documents of the Association for the mutual benefit of the Owners.

2.5 Easements and Rights Reserved. In addition to the easements and rights shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements, rights and powers are hereby reserved for the benefit of the Owners and the Association:

(a) **Right of Entry.** The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of: (1) determining whether or not the Lot is in compliance with the Governing Documents, (2) determining whether the use of the Lot is causing damage or harm to the Common Areas, (3) for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration, or (4) performing maintenance referred to herein. Requests for entry under numbers (1), (2) and (3) shall be made in advance and at a time that is convenient to the Owner within 30 days of the request, or at a time designated by the Association if such time is more than 30 days from the request, , except in the case of an emergency, when such right shall be immediate. No such entry or actions by the Association shall be deemed to constitute a trespass or otherwise create any right of action for damage or otherwise in the Owner of such Lot.

(b) **Utility Easements.** The Association and any public or private utility provider shall have an easement through all Lots and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary as determined by the Board. The Board may grant or create from time to time, on behalf of the Association and on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Area. Within any easement, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. The easement area within each Lot and all improvements therein shall be maintained continuously by the person or entity responsible for maintenance of such Lot in accordance with the terms herein, except for those improvements for which a public authority or utility provider is responsible. Each Lot Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Lots and serving his or her Lot.

(c) Common Areas. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas.

2.6 No Encroachment. No Lot shall encroach upon an adjoining Lot without the express written consent of the Board.

ARTICLE III - EXPANSION OF COMMUNITY

3.1 Discretion to Expand Community. Declarant reserves the right at its sole discretion to expand the Community to include Additional Land by unilateral action of the Declarant during the Period of Administrative Control.

3.2 No Limitations on Amount of Expansion. There are no limitations on the maximum or minimum amount of Additional Land which may be added. There may be more than one expansion and the expansion may be made as to any amount or in any order.

3.3 Process for Expansion. Expansion shall occur by the Declarant recording: (1) an additional plat or plats creating additional phases for lots in the Community; and (2) a declaration of annexation which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a declaration of annexation, the property described therein shall be subject in all respects to this Declaration.

3.4 Limitations on Expansion.

(a) Any additional properties annexed hereto by the Declarant may be for residential or commercial purposes. Any additional properties annexed to the Community by the Declarant shall be architecturally compatible with the existing Living Units and shall be of similar quality.

(b) The Declarant shall have the sole discretion as to the development of any common area in any expansion area and may (or may not) include any facilities or amenities thereon that Declarant deems necessary. Such common areas, if any, shall be managed by the Association.

(c) All taxes and other assessments relating to property to be added must be paid or provided for by the Declarant prior to the addition of the property. Liens arising in connection with Declarant's interest in the property to be added must not adversely affect the rights of existing Lot Owners or the priority of existing first Mortgages on the Property.

ARTICLE IV - ASSESSMENTS

4.1 Covenant for Assessments.

4.1.1 Covenant for Assessments. Each Owner, by acceptance of a deed hereafter conveying any Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments, as provided for and defined below: Annual Assessments, Special Assessments,

Individual Assessments, and Emergency Assessments.

4.1.2 Installments of Annual Assessments. The Board shall determine whether installments of Annual Assessments are levied and collected on a monthly, quarterly, semi-annual, annual or other basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty. No member may exempt itself from liability for Assessments by abandonment of any Lot or Living Unit owned by such member.

4.1.3 Apportionment. Subject to subsection 4.1.4 below, Living Units shall pay equal Annual Assessments, Special Assessments, and Emergency Assessments, all commencing upon the date the Lots are made subject to this Declaration. Individual Assessments shall be apportioned exclusively against the Lot(s) or Living Unit(s) benefitted or to which the expenses are attributable as provided for below.

4.1.4 Declarant Assessment Exemption. Notwithstanding anything herein to the contrary, the Declarant, and any Lot to which the Declarant holds record title, shall be exempt from any Assessment under this Article.

4.2 *Budget and Annual Assessment.*

4.2.1 Adoption of Budget. The Board shall prepare an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect. The Board shall present the adopted budget to Association members at a meeting of the members.

4.2.2 Determination of Annual Assessment.

(a) The Board shall fix the initial amount of Annual Assessments at least thirty (30) days in advance of the beginning of an Annual Assessment period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period.

(b) The omission by the Board, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

(c) **Equitable Changes.** If the Annual Assessments levied at any time are, or will become, inadequate to meet the expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board may determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and establishes the equitable change in the amount of the Annual

Assessment. Owners shall be given at least twenty (20) days' written notice of any changes in the amount of an Assessment.

4.3 Special Assessments. In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time ("Special Assessment") against all Lots and/or the Owner(s) of all Lots for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments. The Board may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per Lot may only be levied if it is first voted upon by the Owners against which the Special Assessment is to be levied, and: (1) the votes cast favoring the action exceed the votes cast opposing the action, and (2) a quorum of Owners representing at least 30% of the voting rights of Owners against which the Special Assessment is to be levied cast a vote.

4.4 Individual Assessments. Any expenses which are not Common Expenses and which benefit or are attributable to fewer than all of the Lots, may be assessed exclusively against the Lots actually affected or benefitted ("Individual Assessments"). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot, Living Unit, or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents, and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) Expenses relating to the cost of maintenance, repair and replacement of a Lot or Living Unit to the extent incurred by the Association, other than Common Expenses incurred in fulfilling its ordinary maintenance responsibilities to Lots or Living Units under this Declaration.

4.5 Emergency Assessments. Notwithstanding anything contained in this Declaration, the Board, without Owner approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Owners with the notice of the emergency assessment. If such expenditure was created by an unbudgeted utility, maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual assessment. An emergency situation is one in which the Board finds: (a) an expenditure, in its discretion, required by an order of a court, to defend the Association in litigation, or to settle litigation; (b) an expenditure necessary to repair or maintain the Community or any part of it for which the Association is responsible where a threat to personal safety in the Community is discovered; (c) an expenditure necessary to repair, maintain, or cover actual Association expenses for the Community or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or (d) such other situations in which the Board finds that immediate action is

necessary and in the best interests of the Association and/or the Community.

4.5 Reserve Funds. The Association shall establish and maintain a reserve fund in accordance with applicable law, including without limitation Title 57, Chapter 8a, Section 211 of the Utah Code Ann. (2016) as amended from time to time.

4.6 Fee Due on Transfer of Unit. Each time legal title to a Lot passes from one person to another, within thirty (30) days after the effective date of such title transaction, the new Lot Owner shall pay to the Association, in addition to any other required amounts, a reinvestment fee, in the initial amount of \$250, or such other amount determined by the Board from time to time. The following are not subject to the fee: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, or to a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) for estate planning purposes; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of a Lot owned by a financial institution, except to the extent required for the payment of the Association's costs directly related to the transfer of the property, not to exceed \$250.

4.7 Nonpayment of Assessments. The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, unless otherwise provided by the Board, and shall be delinquent if not paid by the 10th of the month or within such other period established by the Board from time to time. The due date of any Special Assessment or other Assessment shall be fixed in the resolution or document authorizing or levying the Assessment.

4.7.1 Interest. Delinquent payments shall bear interest from the eleventh (11th) day of the month, or such other date established by the Board (the "date of delinquency"), initially at the rate of 18% per annum, or such other rate established by the Board.

4.7.2 Late Charge. Each delinquent payment shall initially be subject to a late charge of Thirty Dollars (\$30.00), or such other amount as determined by the Board from time to time.

4.7.3 Acceleration. If the delinquent installments of any Assessment, including an Annual Assessment, and any charges thereon are not paid in full, the Board, or its authorized agent, may declare all of the unpaid balance of the Assessment to be immediately due and payable upon not less than ten (10) days' written notice to the Owner, and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law, including the Act, and this Declaration. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

4.7.4 Rent Payments by Tenant to Association. If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than 60 days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, and the Association shall apply such

rent payments to the outstanding assessment balance until all amounts due from the Owner to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Board, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association.

4.7.5 Termination of Common Services and Facility Use. If an Owner fails or refuses to pay an assessment when due, the Board may, after giving notice and an opportunity to be heard in accordance with the law and the Governing Documents of the Association, terminate an Owner's right: (1) to receive any service paid as a Common Expense, including but not limited to utility services; and (2) of access and use of recreational facilities. If a hearing is requested, utility services or right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been rendered by the Board. In the event that the Association incurs costs to terminate any such utility service, the defaulting Owner shall be responsible for all such costs. Upon payment of the assessment due, including any interest, late charge, and costs of collection, the Board shall immediately take action to reinstate the terminated utility services to the Lot.

4.7.6 Other Remedies. All membership rights, including the right of a Member to vote shall be automatically suspended during any period of delinquency, unless otherwise determined by the Board. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. The Association shall have each and every remedy for collection of assessments provided in the Act as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

4.8 Lien. All Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article and shall be construed as a real covenant running with the land. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. The declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to Kyle Fielding, Esq., of McDonald Fielding, PLLC, 175 W Canyon Crest Road, Suite 205, Alpine, UT 84004 (who is hereby appointed trustee, subject to substitution from time to time as provided by law), with power of sale, the Lots and all improvements to the Lots for the purpose of securing payment of assessments under the terms of the declaration.

4.9 Enforcement of Lien. The Association may enforce the lien for any Assessment, including Annual, Special, Individual, Emergency, or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. The lien is established and may be enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for breach of any provisions of the

Governing Documents. The lien maybe foreclosed judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security. Such rent shall not be applied to, and shall be in addition to, any outstanding amounts owed to the Association for Assessments or enforcement/foreclosure costs.

4.10 Appointment of Trustee. The Declarant, the Association and each Owner hereby appoints the attorney of the Association who has been retained by the Association at the time a foreclosure is initiated as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code, as may be amended from time to time, and/or as provided further by the Act or any other applicable law.

4.11 Subordination of Lien to Mortgages. The lien of the Assessments provided for in this article shall be subordinate to the lien of any *bona fide* first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as follows: the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, or from the lien of any future assessment, nor shall it relieve any personal obligation of the Owner.

4.12 Personal Obligation and Costs of Collection. Assessments imposed under this Declaration, together with interest at a rate to be established by resolution of the Board, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due.

4.13 Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of the each Owner.

4.14 Statement of Unpaid Assessment & Payoff Information. The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by

an officer of the Association setting forth whether Assessments has been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge, as determined by the Board, may be levied in advance by the Association for each certificate so delivered. The Association may charge a fee for providing Association payoff information needed in connection with the financing, refinancing, or closing of a lot owner's sale of the owner's lot up the maximum amount allowed by law, as determined by the Board.

ARTICLE V - RESTRICTIONS ON USE

5.1 *Restrictions and Requirements.* The following restrictions and requirements are in addition to all other restrictions and requirements contained in this Declaration and the Bylaws:

5.1.1 Residential Use. Living Units shall be used for residential purposes in accordance with, and subject to, the Governing Documents. No trade, craft, business, profession, commercial or similar activities that causes additional pedestrian or vehicular traffic, or creates a sight or noise nuisance, shall be conducted in any Living Unit or upon any Lot.

5.1.2 Drainage System. There shall be no interference with the established drainage patterns or systems, if any, over or through any Lot so as to affect any other Lot or any real property outside the Community unless adequate alternative provision is made for proper drainage and is approved by the Board of Directors.

5.1.3 Offensive Activities. No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities shall be permitted on any Lot or within the Community, nor shall anything be done in or placed upon any Common Area or within the Community which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents.

5.1.4 Unlawful Activities. No unlawful use shall be made of the Community or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

5.1.5 Animals.

(1) The Board shall have the express authority and right to promulgate rules, beyond those stated herein, restricting the keeping of pets within the Community.

(2) No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within or upon any Lot, except as expressly permitted by the zoning ordinance in effect for the Property from time to time.

(3) Those animals which are permitted, if any, shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Community. Any inconvenience, damage or unpleasantness caused by such pets shall be the

responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from the Common Areas.

(4) An Owner may be required to remove a pet upon receipt of a written notice from the Board given pursuant to a resolution relating to rules and regulations governing pets within the Community and enforcement of such rules and regulations and provisions of this subsection. The Board may apply for appropriate judicial relief in the event that Owners violate this Article.

5.1.6 Rubbish and Trash. No part of the Community may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Community except in a sanitary container as specified by the Association or within a trash enclosure screened from public view. All such waste and garbage must be promptly and periodically removed.

5.1.7 Vehicles in Disrepair.

(1) No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Community unless such vehicle is within a garage. A vehicle shall be deemed in an extreme state of disrepair when the Board reasonably determines that its presence offends the occupants of the other Lots.

(2) If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board, the Board may have such vehicle removed from the Community (i.e., towed) and assess the Owner the expense of such removal and any storage necessitated thereby.

5.1.8 Parking of Automobiles and Other Vehicles.

(1) Parking of boats, trailers, commercial vehicles, commercial trucks, truck campers, motor homes and like vehicles and equipment shall only be allowed on Lots and shall be subject to further rules and regulations promulgated by the Board.

(2) The Board may adopt and amend rules to govern the parking of vehicles within the Community, which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of any rule or of this subsection and the cost of any storage thereof.

5.1.9 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 Community except within a Unit, unless in an area screened from public view. No garments, 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 Living Unit unless in an area screened from public view.

5.1.10 Signs. Unless written approval is first obtained from the Board, no advertisement or poster of any kind may be posted in or upon the Properties except:

- (1) Not more than one (1) For Sale or For Rent sign, not exceeding twenty-four (24) inches in height and thirty-six (36) inches long, may be temporarily placed on a Lot;
- (2) Political signs may be temporarily placed on a Lot by the Owner or occupant of the Lot unless and until prohibited or otherwise limited by the Board by rule; and
- (3) Signs may be placed on the Community by Declarant as set forth herein.

5.1.11 Antenna/Dish/Solar Panel Policy. 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. An Owner must submit written notification to the Association within three (3) business days before installing any antenna or dish that is allowed pursuant to this section. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna/dish. Location of an FCC approved dish may not be restricted by the Association 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 Common Area or the property of another Owner. Solar panels are not permitted on any Lot or on any Living Unit unless expressly authorized in the Design Guidelines as adopted and amended by the Architectural Control Committee from time to time.

The Owner is responsible for all damage caused by or connected with the dish, for as long as the dish remains, including damage resulting from water entering a building due to the installation or existence of such antenna/dish. By installing a dish, the Owner agrees to hold the Association harmless and indemnify the Association in the event that someone is injured by the dish or in the installation or maintenance of the dish. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. In the event of a violation of this Section, the Association may bring an action for declaratory and/or injunctive relief and the Owner is subject to a \$50.00 fine to the Association for each violation. If the violation is not corrected within a reasonable length of time as determined by the Board, additional fines of \$10.00 per day will be imposed for each day that the violation continues. The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Section. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein. The terms “dish” and “antenna” are to be used interchangeably in the interpretation of the above policy.

5.1.12 Noise Disturbance. Residents shall exercise extreme care to minimize noise and to use musical instruments, radios, televisions, amplifiers, or any other device so as to not disturb

other residents. Noise disturbances shall subject the Owner of the Living Unit from which the noise originates to a fine, as levied by the Board in its sole discretion.

5.1.13 Increase in Insurance Cost. Nothing shall be done or kept within any Lot or on the Common Areas, which will increase the cost of insurance to the Association or to other Owners. No Owner shall permit anything to be done or kept within his or her Living Unit or Lot, or the Common Areas, which will result in cancellation of insurance on any Lot.

5.1.14 Lease/Rental Restrictions. All leases of Lots or Living Units shall be in writing and be subject to the Governing Documents and any failure by the lessee to comply with the terms of such documents shall be a default under the Lease. Leases shall be a minimum of month-to-month in term. Lots and Living Units may not be rented on a nightly or short term basis.

ARTICLE VI - MAINTENANCE OBLIGATIONS

6.1 Owner's Responsibility. Except to the extent that the Association is responsible therefore under Section 6.2, maintenance of the Lots and the Living Units shall be the responsibility of the Owner(s) thereof, who shall maintain such Lots and Living Units in good condition and repair. Each Owner at his or her sole expense shall maintain and repair the interior of the Living Unit, including floors and each and every structural element beneath the Living Unit, exterior windows, window frames, and exterior doors/door frames. In addition to decorating and keeping the interior of his or her Living Unit in good repair and in a clean and sanitary condition, he or she shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, heating equipment, air conditioners, lighting fixtures, refrigerators, dishwasher, disposal equipment, ranges, toilets, or other appliances or fixtures that may be in, or connected with, his or her Lot. Any fixture, pipe, conduit, or other utility device or apparatus that services only one Lot shall be the responsibility of that Lot's Owner to maintain, repair, and replace. Each Living Unit and Lot shall be maintained so as to not detract from the appearance of the Community and so as to not adversely affect the value or use of any other Living Unit or Lot.

6.2 Maintenance by Association.

6.2.1 The Association shall provide for, as a Common Expense, such care, maintenance, repair and replacement of the following as deemed necessary or desirable by the Board to keep them attractive and generally in good condition and repair:

- (a) The Common Areas (unless otherwise stated in this Declaration); and
- (b) The landscaping, including trees, shrubs, and grass, and walks, including, without limitation, within the HOA Landscaping Easement areas identified on the Plat, and
- (c) Each of the Parkways identified on the Plat.

6.2.2 Snow Removal. Unless Highland City agrees to provide snow removal for any portion of the Common Areas, the Association shall provide for snow removal from the

Common Areas. If a parked vehicle prevents or interferes with snow removal from any Lot, the Owner of the Lot shall be responsible for such snow removal.

6.2.3 To the extent not clarified herein and not inconsistent with the provisions of this Declaration, the Association may, by duly adopted Board resolution, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities. Such determinations shall be set forth in a Board resolution distributed to all Owners and shall be binding against all Owners.

6.2.4 Except to the extent any injury or damage is covered by the Association's insurance, the Association shall not be liable for injury or damage to any person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of any building, including from any pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or intentional act of the Association.

6.2.5 If any area or improvement is damaged, or the need for maintenance, repair or replacement is caused, by the willful or negligent acts of an Owner, their guests, tenants, invitees or other Living Unit occupants, the Owner shall be responsible for the cost of required maintenance, repair or replacement and such costs shall automatically and immediately be an Assessment against such Owner.

6.2.6 The Association may assume an Owner's maintenance responsibility as to a Lot or Living Unit if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action with ten (10) days after mailing of such written notice, then the Association may proceed to maintain the Lot. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall automatically and immediately be an Assessment against such Owner.

ARTICLE VII - DECLARANT RIGHTS AND CONTROL

7.1 *Administrative Control of Association.* Declarant shall assume full administrative control of the Association through an appointed interim Board of Directors, which shall serve until the Turnover Meeting. The Turnover Meeting shall be held no later than upon expiration of the Period of Administrative Control. The Period of Administrative Control shall expire upon the earlier of: (1) Three years after Declarant has ceased to offer Lots for sale in the ordinary course of business, or (2) Declarant voluntarily terminating the Period of Administrative Control. The Declarant may elect to voluntarily terminate the Period of Administrative Control at an earlier time by written notice to the Owners and by calling and holding the Turnover Meeting.

7.2 *Other Rights.* In addition to any other rights under this Declaration or the Bylaws, as long as Declarant owns at least one Lot within the Community, Declarant:

(a) Sales Office and Model. Shall have the right to (i) maintain a sales office and model on one or more of the Lots which Declarant owns, and (ii) authorize a designed builder to maintain a sales office or model on one or more of the Lots which Declarant or the designated builder owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

(b) For Sale Signs. May maintain a reasonable number of For Sale signs, the size of which may be determined by Declarant, at reasonable locations on the Community.

(c) Approval of Amendments. Consistent with the amendment provisions of this Declaration and Bylaws, the approval of the Declarant shall be required in order to adopt any amendment to the Declaration or Bylaws of the Association.

(d) The Act. The Declarant, the Declarant-appointed Board and the Association are exempted from all procedures, requirements and obligations imposed by the Act to the extent allowed by the Act during the Period of Administrative Control and all rights authorized to be reserved by a declarant under the Act are hereby deemed reserved by the Declarant. The Declarant and the Declarant-appointed Board are exempt from association rules and the rulemaking procedure under the Act and all rights under that section are hereby reserved by Declarant.

7.3 *Rights/Easements Reserved to Declarant/Association.*

(a) Declarant reserves in favor of itself and its successors and assigns, and the Association, non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as drainage, utility or sewer easements or open space or common area or otherwise designated as an easement area over any road or on the Community, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat. Without limiting the generality of the foregoing, the Declarant, its successors and assigns, reserves a conservation and nondisturbance easement upon all the property in the Plat within the Conservation/Drainage Easement and Tree Protection Area. No party, including without limitation any Owner of a Lot located within the Conservation/Drainage Easement and Tree Protection Area, shall allow or permit any damage to, destruction of, or removal of any of the natural vegetation, slope, and drainage channel(s) within the Conservation/Drainage Easement and Tree Protection Area. Any Owner of a Lot within the Conservation/Drainage Easement and Tree Protection Area may add extra vegetation, consistent and in harmony with the natural vegetation, within the Conservation/Drainage Easement and Tree Protection Area at such Owner's sole expense and in such Owner's sole discretion.

(b) Declarant further reserves in favor of itself and its successors and assigns, and the Association, an easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Community and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

(c) Declarant further reserves in favor of itself and its successors and assigns, and the Association, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Common Area and grade a portion of such Common Area adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Common Area, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

(d) Declarant further reserves in favor of itself and its successors and assigns, and the Association, a conservation and nondisturbance easement upon certain of the Lots, as follows: there is a power line traversing the West side of the Property noted on the Plat as the Existing Power Easement. No Owner of a Lot within the Existing Power Easement shall allow or permit any construction, or cause to be construction any improvements, under or within close proximity to the Power Line without approval from the Architectural Control Committee.

(e) Declarant further reserves in favor of itself and its successors and assigns, and the Association, the non-exclusive right to access, and the exclusive right to maintain, landscaping, streetscapes, and other aesthetic improvements in the Common Areas and any areas designated on the Plat as HOA Landscaping Easement. No party, including any Owner of a Lot on which an HOA Landscaping Easement (as shown on the Plat) is located may interfere with the Association's access to the HOA Landscaping Easement areas.

ARTICLE VIII – THE ASSOCIATION

8.1 Association. The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the State of Utah, the Board may re-incorporate the Association without a vote of the Owners. The affairs of the Association shall be governed by a Board as provided herein and in the Bylaws. Declarant has appointed an interim Board of Directors of the Association, which shall serve until their successors have been elected at the Turnover Meeting.

8.2 Membership. Each Owner shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

8.3 Voting Rights. The method of voting shall be as provided in the Bylaws. Voting rights within the Association shall be allocated as follows:

(a) **Lots.** Subject to any rights granted to Declarant during the Period of Administrative Control, each Owner shall have one (1) vote in matters of the Association for each Lot owned.

(b) Declarant. For each Lot owned, the Declarant shall have three (3) votes up during the Period of Administrative Control until, but not including, the Turnover Meeting.

8.4 Powers, Duties and Obligations. The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a corporation and under any applicable statute, as such statute may be amended to expand the scope of association powers, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments and fines as provided in this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00).

(b) The Association may borrow money, provided the assent of a majority of all Owners is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

(c) Telecommunications/Fiber Optic/Related Contracts. Provided the Association already provides such service to the Lots, the Board shall have the power, in its own discretion and subject to federal law, to enter into, accept an assignment of, or otherwise cause the Association to comply with contracts with Telecommunication Service providers and Telecommunication Facilities owners (both, a "Telecommunication Provider"), pursuant to which the Telecommunication Provider serves as the exclusive provider of Telecommunication Services and/or Telecommunication Facilities to each Lot in the Properties, as well as the power to enter into or contract on behalf of the Association for similar bulk rate service contracts of any nature deemed in the Association's best interests. If such service(s) is not already provided to the Lots, the prior approval of the Owners shall be obtained by a vote where a majority of the votes cast are cast in favor of the service.

(d) Bylaws. The initial Bylaws of the Association are attached hereto as **Exhibit B**.

(e) Rules and Regulations. In addition to the restrictions and requirements above, the Board from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons in the Community and the operation and use of the Living Units, Lots, Common Areas and the Community as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Community. Reasonable fines may be levied and collected as an assessment for violations of said rules and regulations and for violations of any restrictions contained in this Declaration. A schedule of fines may be adopted by the Board of Directors specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

ARTICLE IX – ARCHITECTURAL CONTROL COMMITTEE

9.1 Purpose. These covenants are designed to establish a quality harmonious development and to maintain that harmonious quality as long as possible. The intent of these covenants is that there shall be certain minimum architectural standards applicable within the Community, subject at all times to possible exceptions, adjustments, or variances as the Architectural Control Committee may agree to from time to time and/or on a case by case basis, based on, among other things, the established Community Wide Standard.

9.2 Improvement Approval. No building, fence, wall or other structure shall be commenced, erected or maintained in the Community or upon any Lot, nor shall any exterior addition to, or change or alteration thereto, of any sort, whether structural, landscaping, cosmetic or otherwise, be made by an Owner until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. Such approval shall be solely at the discretion of the Architectural Control Committee as it deems appropriate from time to time. Any such request shall be deemed to have been denied if the relevant Owner, including any subsequent Owner, cannot produce the written approval granted by the Architectural Control Committee upon request, and any changes or alterations made by an Owner, or prior Owner, shall be removed and the property restored to its original condition at the request of the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove a request by an Owner, the request will be deemed to have been denied. This subsection shall not apply to Declarant's building or construction activities during the building and development of the Project.

9.3 Designed Guidelines. Design and construction of Improvements (other than by the Declarant) shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design criteria which the Architectural Control Committee is hereby empowered to adopt (referred to as "**Design Guidelines**"), revise, expand, clarify, and otherwise provide from time to time for the harmony and compatibility of the Improvements constructed within the Project. Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized for original construction. All original construction by Declarant shall be and is hereby approved. All builders and owners, including individual builders of one or more Lots obtained from the Declarant, shall comply with and are bound by the design restrictions herein and the Design Guidelines, if and when such are adopted or may exist from time to time.

9.4 Swimming Pools/Hot Tubs. Notwithstanding anything else herein, swimming pools and hot tubs shall be permitted to be installed upon Lots, subject to the requirement to obtain prior approval stated above, which approval shall be granted so long as the proposed pool or hot tub is in harmony as to external design and location in relation to surrounding structures and topography to the extent possible or reasonable, as determined by the Architectural Control Committee.

9.5 Composition. The Architectural Control Committee shall be composed of the same individuals who serve on the Board from time to time (in other words, each Board member is, so long as he or she remains a Board member, also a member of the Architectural Control Committee). However, notwithstanding the foregoing, the Board at any time may, by simple majority vote, appoint other individuals (not necessarily Board members) to serve on the Architectural Control Committee. The Board, by simple majority vote, shall have full discretion, including regarding the composition of the Architectural Control Committee, including, for example, the number of committee members, the qualifications of the committee members, the terms of service of the committee members, and the identity of the committee members from time to time.

ARTICLE X - COMPLIANCE AND ENFORCEMENT

10.1 Compliance. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and any applicable statute. Failure to comply therewith shall be grounds for levying of a fine and an action or suit maintainable by the Association or an aggrieved Owner.

10.2 Remedies. Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors acting on behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:

10.2.1 Subject to the provisions of this Declaration, to enter the Lot as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

10.2.2 To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

10.2.3 To levy fines and any violation of any express rule, regulation, covenant, restriction, or term of any Governing Document of the Association shall be subject to a fine in the amount determined by the Board from time to time. A subsequent violation of the same specific type occurring within 12 months of a prior violation shall be deemed the same violation for all purposes, including the purpose of notice, and shall be subject to an immediate fine;

10.2.4 To terminate the right to receive utility services paid for by assessments, if any, to terminate the right of access to and use of recreational and service facilities of the Association, if any, until the correction of the violation has occurred;

10.2.5 The right of the Association to suspend the voting rights after notice and an opportunity to request a hearing for any period not to exceed sixty (60) days for any infraction of any of the Governing Documents, including failure to timely pay an assessment;

10.2.6 Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. The Association shall be entitled to an award of its attorneys' fees and costs in any action taken for the purpose of enforcing or otherwise implementing the terms of the Governing Documents, or for any action taken pursuant to the Governing Documents, if it prevails in such action, regardless of who instituted the action; or

10.2.7 To record, in the records of the County Recorder, against a Lot as to which a violation exists relating to the land or improvements on the land and the noncompliance of such land or improvements with the Governing Documents, a notice of noncompliance setting forth the thing, condition or violation that exists and thereby providing notice to prospective purchasers and all others of the violation and of the requirement that the violation be remedied by the Owner or future Owner of the Lot.

10.3 Action by Owners. Subject to any limitation imposed under the Governing Documents or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

10.4 Injunctive Relief. Nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

ARTICLE XI - INSURANCE

11.1 Types of Insurance Maintained by the Association. The Association shall obtain the following minimum types of insurance:

(a) **Liability.** A public general liability insurance policy covering the Association, its officers, Board members and managing agents, having at least a Two Million Dollars (\$2,000,000.00) limit per total claims that arise from the same occurrence or in an amount not less than the minimum amount required by applicable law, ordinance or regulation. Coverage under this policy shall include, without limitation, all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas.

(b) **Property.** Blanket property insurance or guaranteed replacement cost insurance with not less than 100% of the full replacement cost for any improvements, if any, located upon any Common Areas.

(c) Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board, employees, and all others who are responsible for handling funds of the Association, including any property manager. Such fidelity coverage shall: (i) name the Association as an obligee; (ii) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or managing agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Lots plus reserves; (iii) contain an appropriate endorsement(s) to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's management agent, if the Association has delegated some or all of the responsibility for the handling of funds to a management agent; (iv) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days prior written notice to the Association or any insurance trustee.

(d) Miscellaneous Items. The following provisions shall apply to all insurance coverage of the Association:

1) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

2) Deductible. The Association shall pay for the deductible on any claim made against the Association's property insurance policy for a covered loss incurred to the Common Area, except where the claim is made because of the negligence or willful acts of an Owner or occupant, including a guest, invitee, or visitor, as determined by the Board. In such cases, the corresponding Owner shall pay the deductible amount.

3) Special Endorsements. Each policy shall contain or provide those endorsements commonly purchased by the other community association in the county.

4) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or Association may deem necessary or appropriate from time to time, including directors and officers liability insurance.

11.2 Lot Owner Insurance Responsibility. The Association's policy does not and will not cover the contents of a Lot or Living Unit or a Lot Owner's personal property. Each Owner of an improved Lot shall at all times maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to and not less than one hundred percent (100%) of the current replacement value of the Living Unit and any other Improvements on the Lot. In the event of any damage or destruction of the Living Structure or other Improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed Improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such Improvements originally approved by the Declarant. This Declaration does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss, except that, notwithstanding the foregoing, an insurer under a property insurance policy or liability insurance policy obtained by the Association waives the insurer's right to subrogation under the policy

against: (a) any person residing with the Owner, if the Owner resides in the Living Unit, and (b) the Owner.. No work on any part of the Property, including Lots and Living Units, shall be performed for repair or replacement due to a covered loss except by a licensed contractor carrying adequate liability and workers compensation insurance, whether such person is hired by an Owner or the Association.

11.3 Power of Attorney

(a) Notwithstanding any of the foregoing provisions and requirements relating to Association property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement (the "Insurance Trustee") who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. By purchasing a Lot, all Owners appoint the Association or any Insurance Trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance specified in this section, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose.

(b) By purchasing a Lot, all Owners appoint the Association or any trustee designated by the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings or negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority.

ARTICLE XII - AMENDMENT AND DURATION

12.1 Amendments.

(a) How Proposed. Amendments to the Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights of the Association. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment

(b) Approval Required. This Declaration may be amended if such amendment is approved by sixty percent (60%) of the voting rights of the Association. Notwithstanding the foregoing, however, for so long as the Declarant owns a single Lot in the Community or any of the Additional Property remains to be annexed into the Project, any and all amendments proposed pursuant to this Section must first receive the approval of the Declarant. Failure to receive such approval shall make the amendment null and void.

(c) Declarant Amendments. The Declarant may unilaterally amend this Declaration at any time until the Turnover Meeting.

(d) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the appropriate County Recorder's Office. An amendment or revocation which only requires the execution of an instrument by Declarant shall be effective when executed by Declarant and recorded with the County Recorder.

12.2 Termination. The provisions, covenants, conditions and restrictions contained in this Declaration, as amended in whole or in part from time to time as provided above, shall continue and remain in full force and effect until there is recorded an instrument directing the permanent termination of this Declaration and the Association after the vote and approval of seventy-five percent (75%) of all of the Owners of the Lots. Any such termination shall become effective only if a certificate of the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Utah County Recorder's Office not less than six (6) months prior to the intended termination date.

ARTICLE XIII - MISCELLANEOUS PROVISIONS

13.1 Severability. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

13.2 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board of Directors, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

13.3 Lessees and Other Invitees. No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any Living Unit occupant, guest, invitee, lessee of any Owner, and each Owner shall indemnify and hold the Board and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Lessees, invitees, guests, Living Unit occupants, contractors, family members and other persons entering the Community under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Community. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

13.4 Waiver, Precedent and Estoppel. No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Declarant, Association, the Board of Directors or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Declarant, Association, Board of Directors or Owner as to any similar matter.

13.5 Interpretation. All questions of interpretation or construction of any of the covenants or restrictions in this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes.

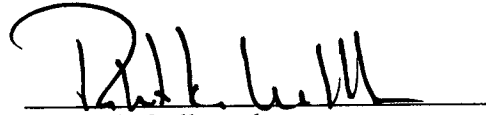
13.6 Premises Liability. From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of Owners, Declarant shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities; inasmuch as the control, operation, management, use and enjoyment, of the common area shall be within, under, and subject to the Association—and not Declarant, and an Owner shall defend, indemnify and hold harmless the Declarant against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the common area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the common area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

13.7 Notice of Sale, Mortgage, Rental, or Lease. Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

13.8 Exhibits Incorporated. Each and all of the exhibits and attachments to this Declaration are incorporated into this document and made an integral part of this document by this reference.

IN WITNESS WHEREOF, Mercer Oaks, LLC has executed this Declaration of Covenants, Conditions and Restrictions this 30 day of June, 2016.


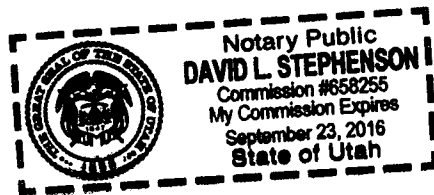
Mercer Oaks, LLC
A Utah limited liability company



By: Rob Gulbrandsen
Its: Manager

STATE OF UTAH)
)ss:
County of Salt Lake)

The foregoing instrument was acknowledged before me on this 30 day of June, 2016 by Rob Gulbrandsen, Manager of Mercer Oaks, LLC.



Notary Public

EXHIBIT A

(LEGAL DESCRIPTION)

All Lots shown on the Highland Oaks Phase 1 Final Plat, recorded on June 30, 2016 as Entry No. 60016:2016, Map file No. 15120, in the official records of the Utah County Recorder.

EXHIBIT B

BYLAWS OF THE HIGHLAND OAKS HOMEOWNERS ASSOCIATION

1. **Annual Meetings.** The first annual meeting and subsequent annual meetings of the Association will be held at a time and in a month specified by the Board.
2. **Special Meetings.** A special meeting of the Association may be called at any time by the Board or the president of the Association, or by the Board upon the written request of at least 30% of the Owners. A special meeting may only be held for the purposes set forth in the notice for that special meeting.
3. **Place of Meetings.** The Board may designate any place in the State as the place for any annual or special meeting of the Association.
4. **Notice of Meetings.** Notice of each meeting stating the place, date, and time of the meeting and the purpose or purposes for which the meeting is called, will be delivered to each Owner entitled to vote at the meeting, not less than 7 nor more than 90 days before the date of the meeting. If mailed, the notice will be deemed to be delivered when deposited in the United States mail, postage prepaid, and addressed to the Owner at its address as it appears in the records of the Association. The Board may set a record date for determining the Owners entitled to notice. The Association will give notice at the Association's expense of any special meeting called by the Owners.
5. **Quorum.** Except as otherwise provided in the Declaration, the number of Owners participating in a meeting in person, by proxy, or by written ballot will constitute a quorum.
6. **Voting Method.** Votes may be cast in person, by proxy, or as determined by the Board, by written ballot.
7. **Action by Proxy.** Every proxy must be executed in writing by the Owner or its duly authorized attorney-in-fact and filed with the secretary of the Association before or at the time of the meeting. No proxy will be valid after the expiration of one year from the date of its execution unless otherwise provided in the proxy.
8. **Action by Written Ballot.**

(a) Any action that may be taken at any meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Owner entitled to vote on the matter. Such written ballot will set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot will be valid only when the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot. Owners submitting a written ballot will be considered to

have participated in the meeting for all purposes.

(b) All solicitations for votes by written ballot will: 1) indicate the number of responses needed to meet the quorum requirements; 2) state the percentage of approvals necessary to approve each matter other than election of directors; 3) specify the time by which a written ballot must be received by the Association in order to be counted; and 4) be accompanied by written information sufficient to permit each Owner casting a written ballot to reach an informed decision on the matter.

(c) A written ballot may not be revoked.

(d) Action by written ballot will have the same effect as action taken at a meeting.

(e) The number of votes cast by written ballot will constitute a quorum for action on the matter.

(f) A written ballot may also be used in connection with any meeting of the Association, thereby allowing Owners the choice of either voting in person or by written ballot delivered by an Owner to the Association in lieu of attendance at such meeting. A valid written ballot will be counted equally with the votes of Owners in attendance at any meeting for every purpose.

9. Number, Election, Term of Directors. The Board shall consist of three Directors. The Directors shall also constitute the Officers of the Association. Except during the Period of Administrative Control, Directors will be elected at the annual meetings of the Association by a plurality of votes, that is, the candidate(s) with the most votes shall be elected. Except during the Period of Administrative Control and except at the first election, each Director will hold office for a term of two years. At the first election, the two candidates receiving the most votes shall be elected for two year terms and the third Director shall serve a one year term, so as to achieve a staggering of terms.

10. Resignation or Death. A Director may resign before the expiration of his or her term by giving written notice to the president or to the secretary of the Association. Such resignation will take effect on the date specified in the notice. Upon the resignation or death of a Director, the remaining Directors will appoint a replacement Director to serve until his successor is elected.

11. Meetings. Meetings of the Board will be held at least annually, and at any time when called by the president of the Association or by two or more Directors, upon the giving of at least two days' prior notice of the time and place of the meeting to each Director by hand-delivery, prepaid United States mail, fax, email, telephone, or in any other manner deemed fair and reasonable by the Board. Any business may be transacted at a Board meeting. No notice of a Board meeting need state the purposes for holding the meeting, and no notice of any adjourned Board meeting will be required. If the Board establishes a regular meeting schedule, then such regular meetings of the Board may be held without notice of the date, time, or place of the meeting to the other Directors.

12. Place of Meetings. The Board may designate any location convenient to the Directors in which to hold a Board meeting. Directors may participate in any Board meeting by means of any

electronic or telephonic communication by which all participants may simultaneously hear one another during such meeting. Directors who participate in a Board meeting by such means will be considered present for all purposes, including the presence of a quorum.

13. Quorum. A majority of Directors will constitute a quorum for the transaction of business, but a lesser number may adjourn any Board meeting from time to time. When a quorum is present at any Board meeting, a majority of the Directors in attendance will decide any question brought before such meeting.

14. Waiver of Notice. Before, at, or after any Board meeting, any Director may, in writing, waive notice of such meeting and such waiver will be deemed equivalent to the giving of such notice. Attendance by a Director at a Board meeting will constitute a waiver of notice by such Director except when such Director attends the meeting for the express purpose of objecting to the transaction of business based on a claim that the meeting was not duly called or convened.

15. Informal Action by Directors. Any action required or permitted to be taken at a Board meeting may be taken without a meeting (e.g., via email correspondence) if each member of the Board in writing either: (1) votes for the action, or (2) votes against the action, or (3) abstains from voting and waives the right to demand that action not be taken without a meeting.

16. Officers. The Officers shall be elected by the Board. The Officers of the Association shall be a president, a vice president, and a secretary/treasurer. The Board may appoint such other Officers, assistant Officers, committees, and agents, including assistant secretaries and assistant treasurers, as it may consider necessary or advisable, who will be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any Officer, agent, or employee are not prescribed by these Bylaws or by the Board, such Officer, agent, or employee will follow the orders and instructions of the president.

17. Removal of Officers. The Board may remove any Officer with or without cause, and elect a successor at any Board meeting.

18. Vacancies. A vacancy in any office will be filled by the Board for the unexpired portion of the term.

19. President. The president will be the chief Officer of the Association. The president will preside at all Association meetings and Board meetings. The president will have the general and active control of the affairs and business of the Association and general supervision of its Officers, agents, and employees. The president is designated as the Officer with the power to prepare, execute, certify, and/or file amendments to the Articles, Bylaws, and the Rules and Regulations on behalf of the Association.

20. Vice President. The vice president will assist the president and will perform the duties assigned to him by the president or the Board. In the absence of the president, the vice president will have the powers and perform the duties of the president.

21. Secretary/Treasurer. The Secretary/Treasurer will:

(a) keep, or cause to be kept, the minutes of the proceedings of Association meetings and Board meetings;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws;

(c) maintain the records of the Association, including a record containing the names and registered addresses of all Owners, the designation of the Lot owned by each Owner, and, if a Lot is Mortgaged, the name and address of each Mortgagee;

(d) perform all other duties incident to the office of secretary and the duties assigned to her or him by the president or the Board;

(d) be the principal financial Officer of the Association and will have the care and custody of all funds, securities, evidences of indebtedness, and other personal property of the Association;

(e) receive and give receipts and acquittances for moneys paid in on account of the Association and will pay out of the funds on hand all bills, payrolls, and other just debts of the Association upon maturity;

(f) perform all other duties incident to the office of treasurer and, upon request of the Board, make such reports to it as may be required at any time;

(g) if required by the Board, give the Association a bond for the faithful performance of his duties and for the restoration to the Association of all books, papers, vouchers, money, and other property in his possession or under his control belonging to the Association; and

(h) have such other powers and perform such other duties assigned to her or him by the president or the Board.

22. Owner Contact Information. Each Owner is required to register a mailing address, a phone number, and an email address with the Association within ten days after becoming an Owner. The contact information of each Owner will be kept in the records of the Association. Owners must notify the Association of any change in contact information within ten days after the change. Any notice mailed to an Owner's registered address or—if the Owner fails to register an address with the Association—to the address on file with the County Recorder will be deemed duly delivered.

23. Affairs, Electronic Means. Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the member if the Board does so in good faith and has no reason to believe it is not the act of the member. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically

associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a Member or by the Association.

24. Notice. In any circumstance where notice is required to be given to the homeowners, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. A homeowner may require the Association, by written demand, to provide notice to the homeowner by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring members to furnish the Association with a current email address.

25. Amendment. Except as limited by law or the Articles, these Bylaws may be amended by a vote of at least a majority of the voting rights of the Association.

[End of Bylaws]