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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
(with Association Bylaws)**

**Rosecrest Communities Planned Unit Development**

**City of Herriman, Salt Lake County, Utah**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS for the Rosecrest Communities PLANNED UNIT DEVELOPMENT (together with all amendments, supplements, and other modifications hereto, the "**Declaration**") is made on this 21<sup>st</sup> day of February, 2012, by Rosecrest Communities, LLC, a Utah limited liability company ("**Declarant**"), in its capacity as the owner of the **Rosecrest Communities** Planned Unit Development (the "**Community**") in the City of Herriman, Utah (the "**City**"). By executing and recording this Declaration, Declarant hereby declares that the real property described in **Exhibit A** and any additional property (collectively the "**Property**") made subject to this Declaration in the future by amendment or **Supplement** (defined below in section 2.01) shall constitute the Community referred to in this Declaration. This Declaration and any Supplement hereto shall run with the title to such Property, shall govern the development and use of such Property, and shall be binding upon current and future owners of any portion of the Property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such Property. This Declaration and any Supplement hereto shall also be binding upon the Rosecrest Communities Master Homeowners Association, its successors and assigns. By taking title to Property in the Community, all Owners join in and accept the intent, purposes, and objectives of this Declaration and agree to be bound by it. Each party bound by the terms of this Declaration acknowledges the benefits received from its existence and the Declarant's prior actions and accepts these benefits and the burdens that accompany this Declaration.

**RECITALS:**

A. Declarant is the owner of the Property constituting certain real property in the City which is set forth and described in (i) **Exhibit A** attached hereto and made a part hereof or (ii) a Supplement to this Declaration.

B. Declarant is developing the Property as a Planned Unit Development approved by the City on December 23, 2008 and known as the Rosecrest Master Plan Community pursuant to the Amended and Restated Master Development Agreement with the City (the “**MDA**”) and the subdivisions plats for the Property approved by the City from time to time, as such MDA and plats may be altered or amended from time to time with the consent of the City (the “**Development Plan**”). As currently contemplated, the Community will contain residential **Units** (defined below in section 2.01). As additional Property is added to the Community by subsequent Supplements to this Declaration, the Community may also contain common areas deeded to the Community such as parks and open space owned by the Community (the “**Common Areas**”) which are intended to be used and enjoyed by the **Owners** (defined below in section 2.01) pursuant to the provisions of this Declaration.

C. In furtherance of the Development Plan for the Community, Declarant intends to adopt the provisions of this Declaration for the benefit of the Owners of the Property, all of which provisions shall run with the title to the Property and each Unit within the Property. In addition, Declarant has created or will create the Rosecrest Communities Master Homeowners Association (the “**Association**”) to which Declarant in due course will delegate and assign, among other things, (1) the powers of owning, maintaining and administering the Common Areas, (2) the duties of administering and enforcing this Declaration, and (3) the duties of collecting and disbursing the assessments and charges hereinafter created in connection with the operation, maintenance, repair and replacement of the Common Areas and the functions and obligations of the Community Association created hereunder.

D. The MDA, which was last amended and updated on December 18, 2008, has governed and will govern the development of both the new Community and the neighboring planned unit development known as Rosecrest and managed by The Rosecrest Homeowners Association (the “**Previous Project**”). It is the intent of Declarant that the new planned unit development Community be developed in harmony with the Previous Project to the extent required by the MDA. Notwithstanding the foregoing, the respective homeowners associations for the Community and the Previous Project are completely separate legal entities with legally distinct rights, responsibilities, and assessment areas.

E. To the extent any part of the Property was previously included as “Additional Lands” in the Exhibit B to a Declaration of Covenants, Conditions, and Restrictions recorded for the Previous Project, which document for the Previous Project was recorded as entry 7673672, in Book 8373, Page 1601-1642, on July 5, 2000 by the Salt Lake County recorder, this Declaration hereby sets forth the intent of the owner of the Property to waive its right to add the Property to the Previous Project and instead create the new separate Community governed by this Declaration. **Pursuant to this Declaration, none of the Property is subject to the Previous Project and is instead subject only to this Declaration for the Community.** Because the

potential “Additional Land” was never legally added to the Previous Project through a subsequent declaration, supplement, or other recorded document, the “Additional Land” designation no longer has any legal effect due the recording of this Declaration by the current owner of such real property. One or more terminations of the declaration for the Previous Project as to the Property may also be separately recorded, although such additional recordings are for the convenience of those researching title and do not alter the fact that (1) the additional land for the Previous Project was never added to that Project and (2) any land made subject to this Declaration can no longer be added to the Previous Project.

## **ARTICLE 1 GENERAL**

1.01 **General Purposes and Information.** Declarant intends to develop the Community as a mixed-use planned unit development with neighborhoods having various attached and unattached single-family residential units, condominiums, apartments, businesses, and recreational open space. Declarant intends that this Declaration (i) establish and provide for the continued maintenance of the residential portions of the Community as an attractive and desirable residential community, (ii) preserve and add long term value to the Property for the benefit of the Owners, (iii) create and preserve open space with an integral park system, and (iv) provide the Community rules governing the development, maintenance, and use of the residential Property within the Community. This Declaration will govern businesses only to the extent that businesses are operated from a residential Unit designated by as a Live-Work Unit (defined below in Section 2.01) in Exhibit A or in a Supplement to this Declaration. The Community will include businesses other than live-work Units, and those businesses will be governed by a separate declaration recorded by Declarant for the commercial lots. In addition, this Declaration shall serve the purpose of making clear that **none of the Property is subject to a declaration for the Previous Project and is instead subject only to this Declaration.** The general information for the Community required by Utah Code section 57-8a-212 is listed as follows:

- (a) **Project Name:** Rosecrest Communities Planned Unit Development (referred to herein as the Community).
- (b) **Association Name:** Rosecrest Communities Master Homeowners Association (as defined in section 1.02(c) below).
- (c) **The Community (or Project) is NOT a cooperative.**
- (d) If any portions of the Community is later added that contains condominiums governed by Chapter 8 of Title 57 of the Utah Code, the Condominium Ownership Act, the Supplement to this Declaration adding such condominiums shall clearly indicate the portions of the Community in which such condominiums are located.
- (e) Declarant desires and hereby reserves the option to expand the Community by adding additional land to the Community with a Supplement to this Declaration.
- (f) The Community is located in Salt Lake County.

- (g) The legal description is attached hereto in **Exhibit A** and in any Supplement to this Declaration for additional land that is later added to the Community.
- (h) To the extent the Community shall include Common Areas added at a later date, a description of any such Common Areas or real estate that is required to become Common Areas shall be included in the Supplement to this Declaration adding such additional land or in the applicable subdivision plat for the Community. The Property now included as Common Area in the Community in Exhibit A hereto is clearly designated as Common Area in the Plat recorded contemporaneously with this Declaration.
- (i) Any restrictions upon alienation of the Property are set forth herein, including without limitation the restrictions on leasing set forth at section 5.09 below. Peter H. Harrison, Utah State Bar # 11365, Vial Fotheringham, 602 East 300 South, Salt Lake City, Utah 84102, is hereby appointed and designated as the trustee for purposes of enforcing and securing payment of assessments pursuant to Utah Code sections 57-1-20 and 57-8a-302. Declarant hereby conveys and warrants pursuant to Utah Code Annotated Sections 57-1-20 and 57-8a-302 to Peter H. Harrison, with power of sale, the Property and all improvements to the Property for the purpose of securing payment of assessments under the terms of this Declaration and any Supplement thereto. Declarant at any time before the Change of Control Date, or the Association after the Change of Control Date, may appoint a successor trustee at any time by filing a notice in the office of the Salt Lake County recorder pursuant to Utah Code section 57-1-22.

1.02 **Densities.** The densities for the Community are generally defined in the Development Plan and may be further set forth or clarified in the MDA.

1.03 **Association.** Declarant has or will create the Association as a Utah non-profit corporation. The Members of the Association will be the Owners (including Declarant) of Units within the Community. Declarant intends to delegate and assign to the Association the powers of owning, maintaining and administering the Community's Common Areas, the duties of administering and enforcing this Declaration, and of levying, collecting and disbursing the assessments and charges herein created.

1.04 **Declaration.** In order to further the general purposes stated above, Declarant hereby declares that all of the Property shall at all times be owned, held, sold, conveyed, occupied, used, and enjoyed subject to the provisions of this Declaration and to the covenants, conditions, restrictions, equitable servitudes, reservations, easements, assessments, charges, and liens provided, referred to or incorporated herein, all of which shall run with such properties and all of which shall burden, benefit, and be binding upon Declarant, all other persons or entities having or acquiring any right, title or interest therein, and their respective successors, assigns, heirs, devisees and personal representatives.

1.05 **Supplement and Exclusions to Declaration.** At any time prior to the Change of Control Date, Declarant may add or remove any real property to or from the terms of this Declaration by recording in the Public Records a Supplement or Exclusion which (i) describes such property, (ii) declares that such property is or is not subject to this Declaration, and (iii) is signed and acknowledged by Declarant. Supplements by which real property is submitted to the terms of this Declaration may be necessary when new Neighborhoods are added to the Community. Exclusions may be necessary for schools, churches, commercial property, and other lots that shall be governed by other declarations or are otherwise not subject to this Declaration for residential Units.

1.06 **Form of Conveyancing; Leases.** Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Unit shall describe the interest or estate involved substantially as follows:

Lot (or Unit) No. \_\_\_\_\_ as identified on the Plat recorded in the Office of the Salt Lake County Recorder as Entry \_\_\_\_\_, Map # \_\_\_\_\_ contained within Plat “\_\_\_\_\_” Rosecrest Communities Planned Unit Development, City of Herriman, Salt Lake County, Utah (as such Plat may have heretofore been amended or supplemented), SUBJECT TO the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements of the Rosecrest Communities Master Homeowners Association, as recorded in the Office of the Salt Lake County Recorder as Entry \_\_\_\_\_, TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

1.07 **Right to Develop and Market.** Notwithstanding anything in this Declaration to the contrary, no provision of this Declaration is intended or shall be construed to prevent or limit Declarant’s rights to develop and market the Community and to exercise the rights reserved by Declarant as herein provided. Such rights reserved to Declarant include, but are not limited to the right to maintain a reasonable number of promotional, advertising, and/or direction signs, or similar items at any place or places on the Property, provided that any such item is of a size and in a location as is reasonable and customary and shall be of professional quality.

1.08 **Incorporation.** The recitals set forth above, the Exhibits hereto, and any Supplement hereto, are hereby incorporated into this Declaration by this reference.

1.09 **Right to Collect Payoff Information Fee.** To help defray the costs of recordkeeping and providing information to the new Owners of a Unit, the Association may, but is not required to, assess a fee against a Unit for each recorded transfer of a Unit, provided such fee is not prohibited pursuant to Utah Code section 57-8a-106 or any other applicable statute.

## **ARTICLE 2 DEFINITIONS**

2.01 Unless otherwise expressly provided herein, capitalized words and phrases used in this Declaration shall have the following meanings:

(a) **“Apartment Lot”** shall mean a subdivided parcel of land with the Community that has been approved by the City for the construction of residential apartments and designated as such on the applicable Plat on in an Exhibit or Supplement to this Declaration. Although an Apartment Lot shall be a single Unit, the number of votes and assessments shares for an Apartment Lot shall be equal to the number of completed individual apartment units constructed on the Apartment Lot. In other words, for any Unit containing separate residential dwellings that are intended to be leased to separate families, such Unit shall have the number of votes and shall pay for assessments equal to the number of separate dwellings within such Unit. For example, if an Apartment Lot has 24 completed apartments with a certificate of occupancy, and a Common Assessment of \$100.00 is made against each Unit, the Common Assessment payable by such Apartment Lot would be \$2,400.00.

(b) **“Articles”** shall mean the Articles of Incorporation of the Rosecrest Communities Master Homeowners Association, as such Articles may be amended from time to time.

(c) **“Association”** shall mean the Rosecrest Communities Master Homeowners Association to be formed by Declarant pursuant to the laws of the State of Utah.

(d) **“Board”** shall mean the Board of Directors of the Association, appointed by Declarant during the Declarant Control Period or elected by the Owners following the Change of Control Date in accordance with the Articles and Bylaws of the Association.

(e) **“Builder”** shall mean a person (including without limitation a legal entity) who purchases one or more unimproved or improved lots or parcels of land within the Community for further subdivision or development and resale in the ordinary course of their business. Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association. In addition, to further the purposes of this Declaration and to enhance the development of specific Neighborhoods, Declarant may extend any of the rights it has reserved under this Declaration with respect to development, marketing, and sale of property in the Community to such Builders as it may designate from time to time.

(f) **“Bylaws”** shall mean the Bylaws of the Association as set forth in **Exhibit B** attached hereto, as such bylaws may be amended from time to time.

(g) **“Capital Improvement Assessment”** shall mean the charge against each Owner and the Owner’s Unit for the purposes specified in Section 11.05.

(h) **“Change of Control Date”** shall mean the date on which Declarant’s Class B voting rights terminate pursuant to the provisions of Section 1.02(e) of the Association Bylaws.

(i) **“City”** means the City of Herriman, Salt Lake County, Utah.

(j) **“Common Assessment”** shall mean the charge against each Owner and the Owner’s Unit for the purposes specified in Section 11.02.

(k) **“Common Areas”** shall mean all the real property, Improvements, facilities and equipment owned or managed by the Association, or owned by another person subject to an agreement, lease, license, easement or other arrangement which grants or imposes for rights or responsibilities for Declarant or the Association for the benefit of more than one Owner. The Common Areas within the Community shall include without limitation the Community open space, any roads or alleys not dedicated to and accepted by the City, and any other areas within the Community clearly intended as and identified as common area, limited common area, or Association property, which areas may be specified in the Development Plan and, where applicable, in other separately recorded documents identifying Common Areas or specifying an interest of the Association with respect to any Common Areas. The Common Area includes any property and facilities in which the Association holds possessory or use rights for the common use or benefit of more than one Unit and any property that the Association holds under any or easements in favor of the Association. Common Areas shall not include (i) any roads dedicated to and accepted by the City, (ii) any parks or open space dedicated to and accepted by the City or other legal entity and for which the Association no longer has any responsibility, or (iii) any Neighborhood Common Area.

(l) **“Common Expenses”** shall mean the expenses (including allocations for Reserves) incurred or assessed by the Association in fulfilling its duties.

(m) **“Declarant”** shall mean Rosecrest Communities, LLC, a Utah limited liability company, and its successors and assigns to whom it assigns, in whole or in part, the rights of Declarant hereunder by an express written assignment.

(n) **“Declarant Control Period”** shall mean the period commencing on the date on which the Association is formed and ending on the Change of Control Date.

(o) **“Declaration”** shall mean this Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements, as amended from time to time.

(p) **“Design Guidelines”** shall mean any design guidelines adopted by Declarant in accordance with this Declaration or the MDA, as amended from time to time by the Association, including without limitation the technical guidelines set forth in or attached to the MDA, with the Single Family Technical Guidelines especially applicable to the Property set forth in Exhibit A hereto. Declarant reserves the right to add additional Design Guidelines for new property added to the Community by attaching such Design Guidelines to the Supplement adding additional Property to the Community. Moreover, pursuant to Utah Code section 57-8a-217(6), Declarant hereby reserves the right to exempt itself and its assigns from the Association rules and the rulemaking procedure under section 57-8a-217 until the Change of Control Date (i.e., during the period of administrative control).

(q) **“Design Review Committee”** shall mean the Rosecrest Communities Design Review Committee (or DRC) for the Community created to ensure compliance with the Design Guidelines pursuant to Article 6 hereof.

(r) **“Development Agreement”** shall mean any agreement executed by and between the City and Declarant pertaining to the development of any portion of the Community.

(s) **“Development Assignee”** shall mean any person or entity that, in conjunction with acquiring all or part of the Property from Declarant, receives an assignment of Declarant’s rights pursuant to this Declaration, including Declarant’s class B voting rights pursuant to Section 11.01 of this Declaration.

(t) **“Development Plan”** shall mean the master plan for the Community approved by the City as the same may be amended from time to time, including without limitation the final plats recorded in the Public Records. The Development Plan is not intended to set forth the final approved configuration of all elements of the Community.

(u) **“Director”** shall mean a member of the Board.

(v) **“Dissolution”** shall mean acts or non-acts by the Association that cause the voluntary or involuntary dissolution of the Association.

(w) **“Exclusion”** shall mean a document recorded by the Declarant in the Public Records prior to the Change of Control Date to remove any real property from the terms of this Declaration and which (i) describes such property, (ii) declares that such property is or is not subject to this Declaration, and (iii) is signed and acknowledged by Declarant.



(x) **“Guest”** shall mean any family member, tenant or invitee of an Owner, or any family member, tenant or guest of such a person.

(y) **“Improvements”** shall mean all structures and appurtenances thereto of every type and kind, including, without limitation, buildings, out buildings, walkways, garages, carports, roads, public water, storm or sewer systems, driveways, parking areas, recreational amenities, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, and related fixtures and equipment.

(z) **“Initial Common Assessment”** shall mean the assessment made against the Unit upon each transfer of the Unit to a new Owner, including without limitation at the day and time of the first closing in which such Unit is transferred to an Owner other than Declarant or a Builder, or if no transfer takes place, on the date twelve (12) months after a certificate of occupancy of similar approval of completion is issued for the Unit. The amount of the assessment shall be such amount as may be determined by the Board from time to time, provided that in no instance shall such amount exceed one-half percent (1/2%) of the total purchase price or value of the Unit, all as set forth in subsection 11.02(c) below. No provision or term in this Declaration shall be interpreted to prevent the collection of Common Assessments and other assessments from the Owner of the Unit prior to assessment of the Initial Common Assessment.

(aa) **“Limited Common Area”** shall mean a certain portion of Common Area assigned for the exclusive use or primary benefit of less than all Units. Limited Common Areas might include such things as entry features, recreational facilities, lakes, green space, green courts, and landscaped medians and cul-de-sacs, among other things. The Declarant may designate property as Limited Common Area and assign it to a particular Neighborhood or particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this Declaration.

(bb) **“Live-Work Unit”** shall mean a Unit that is designated on the applicable Plat or in an Exhibit or Supplement to this Declaration as a Unit in which an Owner shall have the right to operate a business, provided the business is not disruptive, burdensome, or detrimental to the residential character of the neighborhood. The business use of the Unit shall be ancillary to the residential use, and no use shall be allowed that could be deemed to be a nuisance to other Units. Only ancillary businesses with a minimum of impact upon the residential character of the Community shall be allowed in Live-Work Units, such as professional offices (e.g., accountants, attorneys, architects, and engineers), barbershops, and beauty salons. Under no circumstances shall industrial or other heavy commercial uses be allowed in the Live-Work Units.

(cc) **“Managing Agent”** shall mean any person or entity appointed or employed as an agent to manage the Common Areas.

(dd) **“Member”** shall mean a member in the Association through ownership of a Unit within the Community. Any Owner of a Unit is automatically a Member of the Association.

(ee) **“Mortgage”** shall mean any mortgage or deed of trust or other conveyance of a Unit given to secure a loan from an institutional lender in the business of making or holding residential real estate loans, provided that the loan is used to finance the purchase of the Unit and the lien and security interest for such loan will be void and reconveyed upon the repayment of such loan, and further provided that such lender is not affiliated in any way with the Owner of the Unit.

(ff) **“Mortgagee”** shall mean a person to whom a Mortgage is made and shall include the beneficiary of a deed of trust. The term **“First Mortgagee”** shall include any Mortgagee who, by virtue of the Owner’s Mortgage holds a first and prior lien upon any Unit superior to the lien of any other Mortgagee.

(gg) **“Mortgagor”** shall mean a person who mortgages the Owner’s Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a deed of trust.

(hh) **“Neighborhood”** shall mean that portion of the Community included in Neighborhood Association created by Declarant or the Association. A Neighborhood may be comprised of Units of more than one housing type and may include Units that are not contiguous.

(ii) **“Neighborhood Association”** shall mean a separate condominium or owners association created by Declarant, the Association, or Builder assignee of Declarant’s rights hereunder, to administer additional covenants applicable to a particular area or portion of the Community, such as a portion of the Community developed as condominiums or having special requirements or significant Limited Common Area. The jurisdiction of any Neighborhood Association shall be subordinate to that of the Association.

(jj) **“Neighborhood Common Area”** shall mean certain real property owned by a Neighborhood Association for the exclusive use or primary benefit of the Units within such Neighborhood. Neighborhood Areas might include such things as entry features, recreational facilities, open space, green courts, and landscaped medians and cul-de-sacs, among other things. The Declarant may designate property as Neighborhood Common Area and assign it to a particular Neighborhood Association on the recorded plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this Declaration. A Builder or Neighborhood Association may create Neighborhood Common Area within a Neighborhood to be maintained at the costs and expense of the Neighborhood

Association provided that such Neighborhood Common Area is not created from the Common Area of the Association without the written consent of the Association.

(kk) **“Owner”** shall mean the person, including Declarant, holding title of record to any Unit as reflected in the Public Records (including without limitation contract purchasers under executory contracts of sale), but excluding those persons having such interest merely as security for the performance of an obligation. For purposes of membership in the Association (i.e., voting) and being obligated to pay assessments levied against Units by this Declaration, the term shall refer to owners of the Units. If a Unit has more than one Owner, all co-owners are jointly and severally obligated to perform the responsibilities of the Owner under this Declaration, but such co-owners shall appoint one person to be the Owner for purposes of voting hereunder. Every Owner is automatically a Member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the Bylaws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any Common Areas available for use by Owners.

(ll) **“Plat”** shall mean a recorded subdivision plat, as amended from time to time, covering residential lots, Units, and/or Association Common Areas within the Community.

(mm) **“Community”** shall mean the Rosecrest Communities Planned Unit Development Community as it exists at any time.

(nn) **“Property”** shall mean the real property located in Herriman City, Utah as described on **Exhibit A** attached hereto or in any Supplement to this Declaration.

(oo) **“Public Records”** shall mean the Office of the County Recorder of Salt Lake County, Utah.

(pp) **“Reserves”** shall mean those reserves anticipated in Sections 11.02(b) and 11.03.

(qq) **“Rules and Regulations”** shall mean the Rules and Regulations for the Community's Common Areas adopted by Declarant, as such rules may be amended by the Board from time to time pursuant to Utah Code section 57-8a-217. Pursuant to Utah Code section 57-8a-217(6), Declarant hereby reserves the right to exempt itself and its assigns from the Association rules and the rulemaking procedure under section 57-8a-217 until the Change of Control Date (i.e., during the period of administrative control).

(rr) **“Service Area”** shall mean a portion of the Community in which the Units share Limited Common Areas or receive special benefits or services from the Association that the Association does not provide to all Units within the Community. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one housing type and may include Units that are not contiguous. Declarant or the Association may designate Service Areas and assign Units to a particular Service Area in a Supplement.

(ss) **“Shared Lot Common Area”** shall mean an area or feature along a Unit boundary common to two or more Units, such as a shared wall, fence, or roof, which area is for the exclusive use and enjoyment of the Owners of the lots sharing such common feature between them.

(tt) **“Special Assessment”** shall mean the charge against each Owner and the Owner’s particular Unit for the purposes specified in Section 11.04.

(uu) **“Specific Assessment”** shall mean the charge against a particular Owner and the Owner’s Unit for the purposes specified in Section 11.06.

(vv) **“Supplement”** shall mean a document recorded with Salt Lake County by the Declarant prior to the Change of Control Date to make real property subject to the terms of this Declaration which (i) describes such property, (ii) declares that such property is subject to this Declaration, and (iii) is signed and acknowledged by Declarant.

(ww) **“Supplemental Assessment”** shall mean the charge against an Owner of a Unit and such Owner’s Unit for the purposes of maintaining Shared Lot Common Areas or Unit exteriors as specified in Section 11.03.

(xx) **“Transfer”** shall mean any voluntarily or involuntarily abandonment, surrender, assignment or other form of transfer by the Association of any portion of or all of the Common Areas.

(yy) **“Unit”** shall mean a subdivided lot, town home or condominium unit within the Community depicted as a separately identified parcel or unit on a recorded subdivision plat, survey, or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a an attached or detached residence for a single family and is sometimes referred to as a **“Residential Unit.”** The term “Unit” refers to the land, if any, which is part of the Unit, as well as to any structures or other Improvements on the Unit. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat, survey, or condominium instrument is recorded

subdividing it into more than one Unit. The term does not include Common Areas, as defined below, common property of any Neighborhood Association, or property dedicated to the public. Although an Apartment Lot is a single Unit pursuant to the foregoing, for all purposes of voting and assessments, the number of votes and assessments applicable to such a Unit shall be equal to the number of individual apartments contained within such Apartment Lot.

### **ARTICLE 3 ROSECREST COMMUNITIES MASTER HOMEOWNERS ASSOCIATION**

3.01 **Association.** The Association shall do such things as are within its powers and as may reasonably be required to maintain the Community and its Common Areas as an attractive and desirable residential community. The Members of the Association shall be the Owners, including Declarant, of Units within the Community. The duties and powers of the Association shall relate to the Community as a whole and to the ownership and use of the Common Areas, their care, maintenance and upkeep, including the imposition of assessments for such purposes and the other lawful purposes of the Association upon the Owners and their Units.

3.02 **Neighborhood Associations and Service Areas.** The Declarant, a Builder with an assignment of this right from Declarant, or the Association may create one or more Neighborhood Associations or Service Areas within the Community from time to time to serve the special needs of or provide special services to Owners within such Neighborhoods or Service Areas that are not generally applicable to the Community as a whole.

(a) Neighborhood Associations. If a portion of the Community is developed as condominiums, or if other portions of the Community may have special requirements or significant Limited Common Area, the Declarant or Association may establish a separate Neighborhood Association for that particular area or portion of the Community. However, nothing in this Charter requires the creation of a Neighborhood Association, and the jurisdiction of any Neighborhood Association shall be subordinate to that of the Association. Any Neighborhood Association shall be responsible for administering the additional covenants applicable to the Property within its jurisdiction and for maintaining any Limited Common Area or property which it owns or which its covenants designate as being for the common benefit of its Members. A Neighborhood Association may promulgate rules and requirements in addition to and more stringent than those of the Association, but the Owners of Units in the Neighborhood Association are still subject to all of the rules and requirements of the Association unless a different rule and requirement applicable to the Neighborhood Association is approved in a writing that is signed and acknowledged by the Declarant or Association

(b) Creation of Service Areas. Declarant or its assigns (or the Association as set forth in the procedure in this subsection 3.02(b)) may also create and place Units into one or more Service Areas in which the Units share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Units

within the Community. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one housing type and may include Units that are not contiguous. Declarant or its assigns may initially designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area in a Supplement. Prior to the Change in Control Date, Declarant may unilaterally amend this Declaration or any Supplement to change Service Area boundaries. In addition, the Board may, by a resolution, designate Service Areas and assign Units to them upon the affirmative vote of Owners exceeding 50% of the Units affected by the proposed designation.

(c) Service Area Committees. The Owners of Units within each Service Area may elect a “*Service Area Committee*” of no more than five (5) members to represent and act on behalf of the Owners with respect to the services and benefits that the Association provides to the Service Area. References to Service Areas herein shall also refer to such Service Area Committees, if appropriate from the context. Any assessment or action taken by the Board directed at or primarily affecting a Service Area shall be made in consultation with such Service Area Committee.

(d) Alleyway Service Area. Any Unit which has a garage, driveway, or other portion of the Unit that is accessed over a private alley within the Community shall be part of an Alleyway Service Area, and the Board shall make a Supplemental Assessment for the Alleyway Service Area for the maintenance of such private alleys.

**3.03 Duties and Powers of Association.** The Association, acting through the Board, shall have the powers and duties as provided for herein (including without limitation the Bylaws) and in the Articles and under Utah law, as well as any rights and powers that may reasonably be implied under the same, and also such additional powers as shall be reasonable and necessary for the Association to accomplish the purposes of this Declaration. The Association may also take any action reasonably necessary to effectuate any such right, privilege, or purpose.

**3.04 Operation and Maintenance.** The Association shall be responsible for the operation, management, regulation, maintenance, repair and replacement of the Common Areas, including without limitation Limited Common Areas. Without limiting the foregoing, the Association shall as needed operate, manage, regulate, maintain, repair and replace any surface, subsurface, or above-surface Common Areas, including roads, alleys, parks, trails, sidewalks or other Common Areas situated on or crossing any portion of the Community or which is the subject of an easement or license in favor of Declarant and/or the Association over property that is not a part of the underlying Property within the Community but for such easement or license.

(a) The Association shall not be responsible for the repair and maintenance of Neighborhood Common Area or Shared Lot Common Areas, but the Association may make Supplemental or Specific Assessments for such repair and maintenance if the Board in its reasonable discretion determines that such areas should be maintained by the

Association for the benefit of the Community. Each Owner shall be responsible for maintaining such Owner's Unit, including without limitation the Shared Lot Common Areas, in a good and attractive condition and state of repair and in full compliance with this Declaration and the Design Guidelines; *provided, however*, that the cost of the maintenance and repair of exteriors of such Units and the Shared Lot Common Area may be borne by the Owner(s) of the Units through Specific Assessments and Supplemental Assessments levied by the Association against the affected Units or lots as set forth herein.

(b) Although the Owners of the affected Units shall bear the costs through Supplemental or Specific Assessments, the Association may maintain the exterior of townhome or condominium Units, unless the Board determines that such Units are adequately maintained by a Neighborhood Association.

(c) The Association Board shall have the authority to rule upon any disputes between Owners involving Limited Common Areas and Shared Lot Common Area, and the decision of the Board shall be deemed to be final and binding absent a clearly erroneous decision.

**3.05 Health and Safety.** Neither Declarant nor the Association have any obligation or duty to provide services for the health and safety within the Community. Services related to the health and safety of the residents shall be provided by the City, and the Owners shall direct any concerns related to such issues to the City. Under no circumstances shall an Owner or Member, or a Guest of the same, have any right to enforce any duty or maintain an action related to such a duty against the Association. Each Owner shall defend, indemnify, and hold the Association harmless against any claims from such Owner's Guests against the association related to any alleged duty of the Association to provide for the health and safety of the Community.

**3.06 Administration and Enforcement.** Without limiting the generality of the powers of the Association set forth above, the Association shall have the power to:

(a) Grant easements or rights-of-way required by utilities to serve the Common Areas or new land added to the Community by a Supplement to this Declaration.

(b) Employ or contract with a manager to perform all or any part of the duties and responsibilities of the Association, and delegate its power to committees, officers and employees.

(c) Take such actions as may reasonably be necessary or desirable to comply with and enforce the Rules and Regulations.

(d) Contract with such persons as may reasonably be necessary or desirable to effectuate the purposes of this Declaration, including, without limitation, attorneys,

accountants, and contractors to collect and dispose of solid waste and refuse, to maintain the landscaping, to provide security services, and the like, all with respect to the Common Areas.

(e) Take such actions as may reasonably be necessary or desirable to enforce the terms and provisions of the Articles, the Bylaws, this Declaration, or Utah law.

(f) Collect such assessments and enforce such liens as may be reasonably necessary or prudent to maintain the Common Areas in the judgment of the Board.

3.07 **Insurance.** The Association shall maintain such policy or policies of liability, fire and hazard insurance with respect to the Common Areas and personal property owned by the Association as required herein.

3.08 **Assessments.** The Association shall levy and collect all assessments as provided herein.

3.09 **Board of Directors.** The Association shall act through the Board as set forth herein. Unless the Articles, this Declaration, or Utah law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership. The Board is selected as provided for in Article 11 below. The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Areas or Community, enforcement of this Declaration, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its Members.

3.10 **Membership in the Association.** Every Owner, upon acquiring title to a Unit in the Community, shall automatically become a Member of the Association and shall remain a Member until such time as the ownership of the Unit giving rise to such membership ceases, for any reason, at which time the successor Owner of the Unit shall become the successor Member with respect to such Unit.

3.11 **Membership Appurtenant.** Membership in the Association shall be appurtenant to and may not be separated from the ownership of a Unit. Ownership of a Unit shall be the sole qualification for membership in the Association, and such membership shall not be transferred, pledged, or alienated in any way except upon the transfer of title to the Unit giving rise to such membership, and then only to the successor in interest of such title. Any attempt to otherwise transfer a membership shall be null and void, and will not be reflected upon the books and records of the Association.

3.12 **Title to the Common Areas.** Declarant hereby agrees that it will convey or assign (where Declarant owns less than the title) all of its right, title and interest in and to the



Common Areas to the Association, free and clear of all encumbrances and liens, except for the following:

- (a) conditions, restrictions and reservations of easements set forth in this Declaration or any Plat;
- (b) liens for taxes and assessments;
- (c) the terms of other easements and reservations interests in Declarant's chain of title, excluding financial liens; and
- (d) any public rights of record.

The Declarant shall delay the conveyance of the title or assignment of rights as set forth in this Section 3.11 until after the recording of applicable Plats or entitling documents in the Public Records and completion of construction of any Common Areas as required by this Declaration.

**3.13 Taxes on Common Areas.** Unless the property is exempt, real estate taxes or assessments levied or assessed against or upon the Common Areas shall be paid by the Association and shall constitute a portion of Common Expenses unless the applicable taxing or assessing authority is willing to prorate the same equally to each Owner's Unit. Each Owner shall execute such instruments and take such action as may be reasonably specified by the Association to obtain separate real estate tax assessments for the Common Areas on the Owner's Unit.

**3.14 Damage or Destruction to Common Areas.** Damage to or destruction of all or any portion of the Common Areas shall be handled in the following manner:

- (a) If the insurance proceeds are sufficient to effect total restoration in the event of damage or destruction to any Common Area, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.
- (b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Capital Improvement Assessment against each of the Owners and their lots and Units, in accordance with the provisions of this Declaration. Notwithstanding the foregoing, for a necessary Capital Improvement Assessment exceeding \$50 per Unit, such Capital Improvement Assessment shall not be required and the Common Area shall only be repaired to the extent reasonably feasible with available insurance proceeds if a majority of the Owners in each voting Class (as defined in section 1.02 of the Association Bylaws attached hereto as Exhibit B)

disapproves of such assessment within 45 days of the date of the assessment at a special meeting called by Owners under this Declaration, or the Association Bylaws.

#### **ARTICLE 4 EASEMENTS AND THIRD PARTY RIGHTS**

4.01 **Easements Reserved by Declarant.** As to the Property, Declarant hereby reserves to itself and its assigns the following easements:

(a) **Construction Easements and Related Rights.** Declarant hereby reserves for the benefit of Declarant and its assigns (including without limitation Builders) the right from time to time:

(i) to install utilities and infrastructure to serve the Community, including without limitation electricity, water, sewer, phone, communications cables, and stormwater and drainage systems for the Community and land that becomes part of the Community pursuant to a Supplement;

(ii) to construct, inspect, maintain, repair and replace any utilities or Improvements necessary or required for the full development of the Community on the Property owned by Declarant or a Builder, on the Common Areas, and on portions of lots outside of the building areas of Units which may be designated on a Plat;

(iii) to establish and use nonexclusive perpetual utility and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Common Areas for uses including, but not limited to, access roads, paths, sidewalks, pathways, trails, clubhouse, pool, playgrounds, mailbox structures, sprinkler systems and other landscaping changes, improvements and appurtenances (including without limitation, removal of trees and other vegetation subject to any necessary governmental approvals), ponds, drainage facilities, monuments, recreational areas and amenities, parking areas, conduit installation areas, storage facilities for supplies and equipment, earth walls and other roadway supports, lights, and signage;

(iv) to create other interests, reservations, easements, exceptions and exclusions for the best interest of the Association and for the benefit of any Owner or all Owners, *provided* that any such action taken and any easement, lease, permit or license, interest, reservation, exception or exclusion established does not unreasonably impair the use of the Units designated on a Plat; and

(v) to construct and maintain offices, prefabricated structures, booths or other structures for administrative, sales and promotional purposes relating to the Community during its development and marketing.

(vi) To further the purposes of this Declaration and to enhance the development of specific Neighborhoods, Declarant may extend any of the rights it has reserved under this Declaration with respect to development, marketing, and sale of property in the Community to such Builders as it may designate from time to time.

(b) **Landscaping and Drainage Easements.** Declarant hereby reserves for itself and its assigns an easement across the Property (except the portions thereof occupied by Improvements) and within all Common Areas:

(i) to revegetate, beautify or maintain portions of the Property located adjacent to road rights of way;

(ii) to beautify and maintain portions of the Property to the extent necessary, in Declarant's judgment, to mitigate through landscaping, any potential visual impact of the Community;

(iii) to revegetate portions of the Property in order to control erosion, to beautify the Property or to restore the Property to a natural condition after damage by natural or man-made causes;

(iv) to preserve, improve, maintain, restore and revegetate natural and man-made storm drainage ways across the Property, including the building areas of the Property which include drainage ways, and to convey water in those drainage ways; and

(v) to construct, operate, maintain, repair and replace storm detention and water quality structures on the Property, including within the building areas of lots or Units where necessary to adequately control surface water.

(c) **Easements for the Benefit of Owners.** Declarant hereby reserves for the benefit of the Association and all the Owners, the following described perpetual non-exclusive easements over all portions of the Common Areas designated on the Plats, for the use and enjoyment of the Owners and Units in accordance with this Declaration: Easements, including any necessary access rights, for the installation, maintenance and repair of utilities and services; for drainage over, across and upon adjacent lots for water from normal use of adjoining lots, and for the construction, maintenance and repair of earth walls, slopes, retaining walls and other supports, *provided* that any such action taken or any other use of such easements does not unreasonably impair the use of the

Units affected thereby. Declarant also reserves any other easements referred to on any Plat as reserved by Declarant for the use and enjoyment of the Owners.

(d) **Path Easements.** Declarant or Builder may cause certain Units to be subject to an easement permitting Owner or public access trails, paths, or walkways within the boundaries of such Units (a “*Path Easement*”). Any Path Easement shall be shown and described on a Plat recorded in the Public Records, and no Path Easement shall be newly created on a Unit conveyed to an Owner without the written consent of the Owner. Declarant grants to the Association a perpetual, non-exclusive easement on, over, under, through, and across any such Path Easement for maintenance purposes, and the Owners and occupants of all Units shall have an easement permitting the use of the Path Easements for the intended purposes. In addition, the public may be granted similar use rights over any Path Easement. The use of any Path Easement shall be subject to the Rules and Regulations of the Association. The Association shall maintain the Path Easements as a Common Expense in the case of a Path Easement created by the Declarant or accepted in writing as Common Area of the Association, and the Builder or Neighborhood Association shall maintain the Path Easements in the case of a Path Easement created by the Builder that is not accepted as Association Common Area. No Owner or other person shall place or construct any improvement or thing within a Path Easement area without the Association's prior written consent, which consent may be withheld in the Association's discretion, and no Owner or person shall take any action that otherwise interferes with the exercise of the easement rights provided under this subsection 4.01(d).

4.02 **Easements for Benefit of Association.** Declarant hereby grants to the Association, its licensees, invitees, lessees, successors and assigns, a nonexclusive, perpetual easement over, upon, across, above, under and through the Property and each portion thereof to exercise any right held by or obligation imposed upon the Association under this Declaration or any other documents recorded in the Public Records. Notwithstanding the foregoing, the Association shall not enter upon any Unit without reasonable prior notice to the Owner of the Unit, except in cases of emergency. Declarant hereby grants to the Association easements over the Property and Community as necessary to enable the Association to fulfill its obligations, duties, maintenance responsibilities, and enforcement rights under this Declaration. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons; to perform maintenance; to inspect for compliance with this Declaration; and to enforce this Declaration. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

4.03 **Other Easements.** The Property shall be subject to the following easements in addition to those created in this Declaration:

(a) **Easements on Plats and of Record.** The Property shall be subject to all easements shown on any Plat, and to any and all easements recorded in the Public Records.

(b) **Parking.** The Association is hereby empowered to establish “parking” and “no parking” areas within the Common Areas, as well as to enforce these parking limitations by all means lawful for such enforcement including the removal of any violating vehicle.

(c) **Easements for City and County Public Service Use.** Declarant hereby reserves and covenants for itself and all future Owners within the Community, easements for any City, county, state and federal public services, and for public utilities, including but not limited to, the right of the police to enter upon any part of the Property for the purpose of enforcing the law.

(d) **Cable Television, Internet Service, and Similar Utilities.** Declarant hereby reserves easements in, upon, over, across and through the Property for the installation of a cable television system, internet service, or similar utilities, together with the right to grant and transfer such easements.

4.04 **Nature of and Creation of Easements.** Unless otherwise set forth herein, any easement reserved in this Declaration shall be deemed to be nonexclusive, and each easement in favor of an Owner shall be deemed to be appurtenant to and for the benefit of the Unit owned by such Owner. Any and all easements reserved in this Declaration shall be deemed to be in full force and effect upon recordation of this Declaration in the Public Records, whether or not referred to, reserved and/or granted in any instrument of conveyance.

4.05 **Limitation on Owner Easement.** Each Owner’s appurtenant right and easement of use and enjoyment respecting the Common Areas shall be subject to the following:

(a) The right of the Association to govern by reasonable Rules and Regulations the use of the Common Areas so as to provide for the enjoyment of the Common Areas in a manner consistent with the collective rights of all of the Owners;

(b) The right of the City, and any other governmental or quasi-governmental body having jurisdiction over the Property within the Community, to enjoy access and rights of ingress and egress over and across any open area contained within the Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service; and

(c) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; *provided* that such dedication or

transfer must first be approved by the affirmative vote or written consent of a majority of all outstanding Member votes.

4.06 **Additional Reservation of Rights.** Notwithstanding any provision to the contrary, the Declarant also reserves the non-exclusive right and power to grant and record such specific easements consistent with Article 4 or the general purposes of this Declaration as it deems necessary to develop the Property and Community. If the Property is no longer owned by the Declarant, the location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned. Declarant hereby reserves for itself and its duly authorized agents, successors, and assigns the non-exclusive right and power to grant any homeowners or condominium association it may designate and their respective members an easement over the Common Areas for the purpose of enjoyment, use, and access. Any homeowners or condominium association granted such rights shall be obligated to share in the costs of the maintenance of such areas as reasonably determined by the Declarant. Notwithstanding any provision to the contrary, Declarant reserves the right to deny access to the City or any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms acceptable to Declarant.

4.07 **Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the person exercising the easement shall make reasonable efforts to restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

## **ARTICLE 5 OWNERS' RIGHTS AND OBLIGATIONS**

5.01 **Owners' Easements of Enjoyment.** Every Owner and the Owner's Guests shall have a non-exclusive right and easement of ingress and egress and of enjoyment in, to and over the Common Areas, which right and easement shall be appurtenant to and shall pass with fee title to the Owner's Unit, subject to the rights of the Association as set forth in this Declaration and the Articles, including the right of the Association to suspend the voting rights and rights to use the Common Areas (except, if necessary for ingress and egress to the Owner's Unit) by an Owner for any period during which (i) any assessment against such Owner's Unit remains unpaid and delinquent or (ii) any other material violation of this Declaration continues to exist after ten (10) days written notice to Owner, including without limitation any infraction of the Rules and Regulations. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Owners of Units set forth herein and in the Rules and Regulations, as such Rules and Regulations may be amended or modified

from time to time by the Association pursuant to the procedures set forth in Utah Code section 57-8a-217.

**5.02 No Exemption from Liability.** No Owner shall be exempt from personal liability for assessments to be levied by the Association, nor shall the Unit owned by such Owner be released from the liens and charges thereof by waiver of the use and enjoyment of the Common Areas or the facilities thereon or by abandonment of the Owner's Unit.

**5.03 Maintenance Obligations of Owners.** It shall be the duty of each Owner to abide by the provisions of the Declaration regarding Design Review Committee approval and the maintenance, repair and upkeep of the Owner's Unit in a neat, sanitary and attractive condition. It shall also be the duty of each Owner to pay any and all assessments legally assessed pursuant to this Declaration for the maintenance of the Common Areas and the other purposes set forth herein.

**5.04 Maintenance and Repairs.** Each Owner shall, at the Owner's own cost, maintain the Owner's Unit and lot in good condition and repair at all times. In the event of the damage or destruction of any Unit, the Owner of the Unit shall either rebuild the same within a reasonable time or shall raze the remains thereof and landscape the lot so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Community. In addition, each Owner shall also be responsible for mowing, weeding, irrigating, and otherwise maintaining the landscaping in any park-strip between the road and sidewalk in front of the Owner's Unit or the landscaping within that portion of any other adjacent Common Area or public or private right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common Area or public or private right-of-way, but only to the extent such area is reasonably or logically associated with such Unit and the maintenance burden of such adjacent is a reasonable, proportionate, and ancillary to the maintenance of the Owner's property. Owners may not remove or replace trees, shrubs, or similar vegetation from these areas without the written permission of the Board. Trees within these adjacent areas may also be maintained by or with the City or the Association. A change in the painting, remodeling, rebuilding, or modification of any Unit exteriors or parts thereof must first be submitted to and approved by the Design Review Committee pursuant to its procedures. Subject to such Design Review Committee approval, all repainting/staining and other maintenance of the exteriors of the Units shall be performed by or at the direction of (and at the expense of) the Owners of such Units, and the Owners shall maintain their Units in a good and attractive condition and excellent state of repair and in compliance with this Declaration and the Design Guidelines. No Owner shall neglect his lot or Unit or fail to take all reasonable steps to keep the same in a good and attractive condition and state of repair at all times. If an Owner fails to repair and maintain such Owner's Unit or lot pursuant to the standards set forth in this Declaration, the Board may provide written notice to such Owner of such failure (a "**Maintenance Notice**"). If an Owner (a) fails to take the maintenance or repair action specified in a maintenance notice within one month, or (b) fails to begin such action within one month and diligently proceed until completion to the extent such maintenance or repair actions cannot reasonably be completed within one month, the Association shall have to right to perform such maintenance or repair action at the cost and expense of such

Owner as a Specific Assessment pursuant to Section 11.06 of this Declaration. In addition, an Owner may be fined pursuant to Section 9.07 below for any failure to timely take the maintenance or repair action specified in a maintenance notice.

#### **5.05 Maintenance of Shared Lot Common Areas.**

(a) In general, every roof area, fence, wall, or other structure, including without limitation the foundation of adjoining Units, which is built as a part of the original construction of a Unit *and* placed on the boundary line between separate Units shall constitute and be a Shared Lot Common Area, and the Owner of a Unit immediately adjacent to a Shared Lot Common Area shall have the obligation and be entitled to the rights and privileges of these covenants and, to the extent not inconsistent herewith, the general rules of Utah law regarding party walls.

(b) Rights in Shared Lot Common Area: Each Owner of a Unit, which is adjacent to a Shared Lot Common Area, shall have the right to use the Shared Lot Common Area for the support and protection of the structure originally constructed thereon and all replacements thereof and shall have the right to keep, maintain, repair and replace therein all pipes, conduit, and ducts originally located therein and all replacements thereof.

(c) Damage to Shared Lot Common Area:

(i) If any Shared Lot Common Area is damaged or destroyed through the act or acts of any Owner of a Unit which is adjacent to such Shared Lot Common Area, or his agents, servants, tenants, or Guests, whether such act is willful, negligent or accidental, such Owner shall forthwith proceed to rebuild or repair the same to as good a condition as in which such Shared Lot Common Area Existed prior to such damage or destruction without costs therefore to the Owner(s) of the other adjoining Unit.

(ii) Any Shared Lot Common Area damaged or destroyed by some act or event other than one caused by the Owner of a Unit which is adjacent to such Shared Lot Common Area, or his agents, servants, or Guests, shall be rebuilt or repaired by the Owners of the adjacent Units to as good a condition as in which such Shared Lot Common Area existed prior to such damage or destruction at joint and equal expense of such Owners, and as promptly as is reasonably possible.

(iii) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in this Section, to perform the necessary repair or rebuilding, then, the Association may cause such repairs or rebuilding to be performed in the manner as provided in this Section and the cost thereof shall be charged to such Owner as his personal obligation and shall be a continuing lien on the Owner's Unit.



(d) Change in Shared Lot Common Area: Any Owner of a Unit who proposes to modify, rebuild, repair or make additions to any structure upon his Unit in any manner which requires the extension, alteration or modification of any Shared Lot Common Area shall first obtain the written consent thereto, as to said Shared Lot Common Area, of the Owner(s) of the other adjacent Unit(s) and the Design Review Committee (or the Board after the Change of Control Date if there is no standing Design Review Committee), in addition to meeting any other requirements which may apply. In the event that a Shared Lot Common Area is altered, regardless of whether all required consents have been obtained, any express or implied warranties made by the Declarant concerning the structural integrity of the Shared Lot Common Area or any of the Units adjacent to the Shared Lot Common Area shall be null and void and the Owner who alters the Shared Lot Common Area shall be responsible for any and all damage caused to any of the adjacent Units or improvements thereto.

(e) Arbitration: In the event of a disagreement between Owners of Units adjoining a Shared Lot Common Area with respect to their respective rights or obligations as to such Shared Lot Common Area, upon the written request of either of said Owners to the other the matter shall be submitted to the Board and the decision of the Board shall be final and binding absent clear error. The Board may hire an attorney or other professional to conduct and decide such arbitration, and the costs of such arbitrator shall be paid by the parties to the arbitration, with the non-prevailing party bearing the costs on each issue decided by the arbitrator.

5.06 **Owners Insurance.** Notwithstanding any insurance coverage required to be provided herein by the Association, each Owner shall be responsible to procure and maintain in force general hazard insurance and general liability insurance with respect to the Owner's Unit in an amount exceeding the purchase price for the Unit.

5.07 **Assessments and Rules Observance.** Each Owner shall be responsible for the prompt payment of any Common, Special, Specific, or Supplemental Assessments or any other assessments provided for in this Declaration and for the observance of the Rules and Regulations promulgated by the Association from time to time pursuant to Utah Code section 57-8a-217.

5.08 **Transfer of Interests; Title.** Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Unit to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration following such transfer.

**5.09 Leasing Restrictions.** Subject to the requirements or limitations of the City, an Owner may lease his Unit provided that (i) the term of the lease is no less than six (6) months, (ii) lessee receives and agrees to be bound by this Declaration, and (iii) any and all other requirements of this section or Declaration are satisfied. For purposes of this Declaration, the terms “**Lease**” and “**Leasing**” shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit. Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased; however, any detached "in-law suite" or "guest house" approved pursuant to the Design Guidelines and Article 6 below may be leased separate from the main dwelling. All Leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with this Declaration. However, this Declaration shall apply regardless of whether such a provision is specifically set forth in the Lease. Within ten (10) days of a Lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the Lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of this Declaration. The Owner shall remain liable for any and all assessments, fines, and other charges against or associated with the Unit, without regard to whether the fine or assessment was incurred to the actions of a tenant of the Unit. In addition to, but consistent with this section, the Declarant, Association or the Board may adopt additional Rules and Regulations governing Leasing and subleasing, which Rules and Regulations shall be deemed to be part of the Declarations pursuant to this reference for all purposes of Utah Code section 57-8a-209(2)(b), provided that such Rules and Regulations adopted after the transfer of the first Unit within the Community shall include the provisions set forth in Utah Code section 57-8a-209(3). To the maximum extent allowable by law, the Board may adopt such Leasing Rules and Regulations with a simple majority vote of the Board and without a vote of the members of the Association. For the lease of apartments in a Unit specifically designated as an Apartment Lot on the applicable Plat, (i) the lease may be for any duration deemed reasonable by the Owner of the Apartment Lot without regard to the six-month requirement applicable to all other Units, (ii) the Owner need not provide tenants with copies of the Declaration and need only provide notice to the tenants that the Owner will keep a copy of this Declaration in the leasing office for review by such apartment tenants, and (iii) the Owner of the Apartment Lot need not inform the Association of each apartment lease.

**5.10 Maintenance by Neighborhood Associations.** Without limiting the ultimate responsibility of the Owners in a Neighborhood to care for such Property, a Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with this Declaration. Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Common Area or public right-of-way. A Neighborhood Association shall not remove or replace trees, shrubs, or similar vegetation from this area without prior approval of the Association. If the Neighborhood Association fails to fulfill its duties under this section 5.10, the Association may create a Service

Area with the boundaries of the Neighborhood to provide for such maintenance and collect assessments for the same from the Owners in the Neighborhood.

**5.11 Approval Required for Subdivision or Boundary Line Changes; No Timeshares.** No persons other than Declarant and Builders whom the Declarant may authorize in writing shall subdivide or change the boundary lines of any Unit or combine Units without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling. No Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, unless such program is established with the prior written approval of the Declarant or Association.

## **ARTICLE 6 DESIGN REVIEW**

**6.01 Design Guidelines.** Subject to the City's ordinances and building codes, Declarant intends to cause all of the Property to be developed and all of the Common Areas to be constructed and completed pursuant to the Development Plan and the Design Guidelines. Design and construction of the Units shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and the Design Guidelines, including without limitation (i) Exhibit B attached hereto and (ii) such other building and design criteria for the Community that may be approved from time to time or amended from time to time by the Design Review Committee pursuant to the procedures set forth in Utah Code section 57-8a-217. 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 Community be equal or superior to that utilized for original construction. Notwithstanding any provision to the contrary, all original construction completed by Declarant (or by a Builder with a partial written assignment of these rights from Declarant) pursuant to the initial Design Guidelines adopted by Declarant, as they may be amended from time to time, shall be and is hereby approved without regard to the approval procedures set forth below. Declarant (or by a Builder with a partial written assignment of these rights from Declarant) shall have the right to create specific or additional guidelines on any given phase of the Community during the construction of the Community. Declarant reserves the right to add additional Design Guidelines or change the Design Guidelines for new Property added to the Community by attaching such Design Guidelines to the Supplement adding additional Property to the Community. Notwithstanding any provision to the contrary, pursuant to Utah Code section 57-8a-217(6), Declarant hereby reserves the right to exempt itself and its assigns from the Association rules and the rulemaking procedure under section 57-8a-217 until the Change of Control Date (i.e., during the period of administrative control).

6.02 **Unit Quality and Size.** The size and quality material restrictions for the Units constructed within the Community shall be set forth in the Design Guidelines as amended and approved by the Design Review Committee pursuant to the procedures set forth in Utah Code section 57-8a-217.

6.03 **Design Review Committee.** The Design Review Committee shall consist of an uneven number of persons of not less than three nor more than five members, who need not be Owners. The members of the Design Review Committee shall be appointed by Declarant during the Declarant Control Period and thereafter by the Board, and the members of the Committee may be members of the Board. The Committee may utilize professional consultants including an architect, a landscape architect, and a civil engineer. The Committee shall have and exercise all of the powers, duties and responsibilities set out in this Declaration and shall meet on such schedules as may be established by its chairman. A majority of its members shall constitute a quorum and the majority of its members present at the meeting shall be sufficient to approve action. Actions may also be approved by unanimous written consent of all Committee members.

6.04 **Approval by Design Review Committee.** Except for original construction by Declarant (or a Builder with a partial written assignment of such rights from Declarant), no Improvements of any kind, including, without limitation, Units, dwellings, ponds, parking areas, mail boxes, fences, walls, garages, driveways, antennae, satellite dishes, flag poles, curbs, and covered walks shall ever be erected, altered, refinished or repainted (unless of the same finish or color as the original), or removed from any lands within the Property, nor shall any excavating, clearing, removal of trees or shrubs, landscaping or other alteration of existing site conditions be done on any lands comprising the Property, unless the complete plans and specifications therefore (“*Plans and Specifications*”) complying with the Design Guidelines requirements are approved by the Design Review Committee prior to the commencement of work. The Design Review Committee shall consider the materials to be used on the external features of said buildings or structures, including exterior colors, harmony of external design and existing structures within the Community; the building bulk or mass of any buildings or structures within the Community, their location with respect to topography, existing trees, finished grade elevations, and harmony of landscaping with the natural setting and surroundings; and shall ascertain whether the Improvements conform to the Design Guidelines then in effect, under this Declaration. Notwithstanding the foregoing, approval by the Design Review Committee shall not be necessary if Declarant, before the Change of Control Date, accepts and approves a certification by the builder of the Improvement that the construction of the Improvement is in compliance with all applicable Design Guidelines. Declarant is under no obligation to accept such a certification.

6.05 **Approval Procedure.** Two copies of the complete Plans and Specifications must be submitted to the Committee for approval or disapproval by it in writing within 30 days after submission, *provided* that Plans and Specifications for any replacement structure to be constructed in substantially the same configuration, location, architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within 10 days

after submission. In the event the Design Review Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Article 6, as to which respects it shall be deemed disapproved. The Design Review Committee shall disapprove Plans and Specifications submitted to it which are not sufficient for it to exercise the judgment required of it by this Article 6. In the event of a conflict between the Design Guidelines and the applicable regulations or ordinances of the City or any other governmental entity having jurisdiction, the more stringent requirement shall prevail to the extent possible, and the latter shall prevail to the extent it is not legally possible to comply with the most stringent requirement.

**6.06 Construction.** Once begun, any construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the common areas in the vicinity of the activity, *provided* that they shall promptly restore such areas to their prior condition when the use thereof is no longer required. The Design Review Committee shall have the authority and right at any time and from time to time at any reasonable hour to inspect construction or other activities authorized for the purpose of determining whether the same comply in all respects with the applicable Plans and Specifications as approved by it, but it shall have no duty to make such inspections.

**6.07 Fees.** The Committee may retain third party professionals and charge reasonable fees for its review of Plans and Specifications as shall be determined from time to time by the Board. Such fee or fees shall be reasonable in relation to the work performed and shall be applied uniformly. The costs for any third party professionals may be added to the fees charged for the review of Plans and Specifications.

**6.08 Variances.** The Design Review Committee has the authority to deviate from the requirements contained in the Design Guidelines in extenuating circumstances, when to do otherwise would create an unreasonable hardship or burden for an Owner. The Committee does not, however, have authority to allow deviation from the requirements of the City.

**6.09 General Standards.** The Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the lands within the Design Review Community conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siting, height, topography, grade and finished grade elevation in keeping with the Design Guidelines and this Declaration.

**6.10 Ultimate Responsibility.** Each Owner shall at all times conform and comply with all approved Plans and Specifications for the Improvements on such Owner's Unit and otherwise conform and comply in all respects with the Design Guidelines and this Declaration, as well as with all applicable laws, ordinances, building codes, rules, regulations, orders and the like of any governmental agency having jurisdiction over the Unit.

6.11 **Written Records.** The Design Review Committee shall keep and safeguard complete written records of all applications for approval submitted to it (including one set of all Plans and Specifications so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument, which records shall be maintained for a minimum of five years after the approval or disapproval.

6.12 **Procedure for Appeal.** In the event Plans and Specifications submitted to the Design Review Committee are disapproved or deemed disapproved, the Owner may appeal such disapproval or deemed disapproval in writing to the Board; *provided, however,* a written notice of appeal specifying the grounds for appeal consisting of any alleged failure by the Design Review Committee to properly apply the Design Guidelines or provisions of this Article 6 shall be received by the Board not more than 30 days following such disapproval or deemed disapproval. Within 30 days following receipt of such notice of appeal, the Board shall render a written decision determining whether the Design Review Committee properly applied the Design Guidelines, or the provisions of this Article 6. In the event the Board fails to render such decision within said 30 day period, such disapproval or deemed disapproval of the Committee shall be deemed to have been affirmed by the Board.

6.13 **Non-Liability of Design Review Committee Members.** Neither Declarant, the Board, the Design Review Committee, any member thereof, nor any duly authorized representative thereof shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder unless due to the willful misconduct or bad faith of the Design Review Committee. The Design Review Committee shall review and approve or disapprove all Plans and Specifications submitted to it solely on the basis of compliance with the Design Guidelines, any applicable provision of this Article 6, aesthetic considerations, and the overall benefit or detriment that would result to the immediate vicinity of the proposed construction or alteration and the Community generally. The Design Review Committee shall take into consideration the aesthetic aspects of the designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval from the standpoint of structural safety or conformance with building or other codes.

6.14 **Variance in Event of Reconstruction.** Any Owner whose Unit has suffered damage may apply for approval to the Design Review Committee for reconstruction, rebuilding, repainting or repair of the Owner's Unit in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete Plans and Specifications showing the proposed reconstruction and the end result thereof. The Design Review Committee shall grant such approval only if the design proposed by the Owner would result in a finished structure in compliance with the then applicable Design Guidelines.

## ARTICLE 7

## RESTRICTIONS ON ALL PROPERTY

7.01 **City Zoning Regulations.** No lands within the Property shall ever be occupied or used by or for any building or purpose or in any manner which is contrary to this Declaration or any applicable Development Agreement or City Ordinance.

7.02 **No Mining, Drilling or Quarrying.** No Owner, other than Declarant, shall conduct mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, or on the surface of the Property.

7.03 **No Business Uses.** Except as provided in this section 7.03, the lots and Units on the residential Property within the Community shall be used exclusively for residential living purposes. No lots or Units within the Community shall ever be occupied or used for any commercial or business purposes; *provided, however*, that nothing in this Section 7.03 shall be deemed to prevent (a) Declarant, its duly authorized agent, or a Builder approved by Declarant from using any Unit owned by Declarant as a sales model, (b) any Owner or the Owner's duly authorized agent from Leasing said Owner's Unit for residential use pursuant to the restrictions of this Declaration, (c) the operation of a business within a designated Live-Work Unit that is ancillary to the residential use of the Unit and is conducted in strict compliance with and according to the rules and standards as adopted from time to time by the Board, or (d) any home business use (i) authorized and licensed by the City pursuant to the City's home occupation ordinance, and (ii) approved by the Association, according to the rules and standards as adopted from time to time by the Board, *prior* to the Owner's application to the City. The Community may include other property designated for business use in areas of the Community other than the Property subject to this Declaration, and such areas of business property within the Community shall be governed by a separate declaration filed by Declarant.

7.04 **Leasing Restrictions.** No lease of any Unit shall be for less than the whole thereof, except for Apartment Units on an Apartment Lot. All leases shall be subject to the provisions of this Declaration whether or not stated therein.

7.05 **Restriction of Signs.** With the exception of a sign that is not significantly larger than a typical real estate sign (generally 2 feet by 1 ½ feet or three square feet) for the Owner to advertise the Owner's Unit for sale, no signs or advertising devices shall be permitted on any Unit, including, without limitation, commercial, informational or directional signs or devices, except signs approved by regulation and/or in writing by the Design Review Committee in accordance with its Design Guidelines as to size, materials, color and location: (a) as necessary to identify ownership of the Unit and its address; (b) as necessary to give directions; (c) to advise of rules and regulations; (d) to caution or warn of danger; (e) as reasonably necessary to identify the ancillary business permitted in a designated Live-Work Unit, and (f) as may be required by law. Any approved signs shall be located as approved by the Design Review Committee. The Design Review Committee may develop comprehensive sign regulations. The Declarant may erect such signs in a size and color as it deems appropriate for the advertising and sale of lots and

Units within the Community. The signs must be kept neat and clean. Any damaged signs must be removed immediately or may be removed without notice. At no time shall any sign, other than for Declarant or Builder sale purposes, be placed in Common Areas.

**7.06 Restrictions on Animals.** In addition to the restrictions placed on the number or types of animals by the City, to avoid excessive noise, unreasonable annoyance to other Units, and potential health and safety problems within the Community, no Unit may be used to house any more than three animals or two of the same kind of animal, and no animals other than the following ordinary and specifically listed household pets (dogs, cats, guinea pigs, rabbits, hamsters, gerbils, turtles, and small domestic songbirds such as parakeets, cockatiels, or parrots) that reside inside a Unit and not outside may be kept or allowed to remain on any Unit lot. For the avoidance of any doubt, chickens or other poultry are not specifically listed in the foregoing sentence as ordinary household pets and are therefore not allowed. Moreover, no aviaries, beehives, bees, insects, or enclosures or attractions for insects may be knowingly maintained within or without a Unit. Additional Rule and Regulations regarding pets may be adopted from time-to-time by the Board. The Board, in its sole discretion, shall have the right to require any Owner or Guest to remove any animal or other pet belonging to them which is not disciplined or which constitutes an undue annoyance, health risk, or a danger to Owners, their Guests, or others. Undue or excessive barking, noise, or other activity which unreasonably disturbs other Owners shall be grounds for removal of a pet. Conversely, the Board, in its sole discretion, shall have the right to approve of an ordinary household pet other than those listed above (dogs, cats, guinea pigs, and the rest listed) upon a showing that the unlisted ordinary household pet will reside inside the home and will not constitute an annoyance or a danger to other Owners. Unless it is kept in a completely fenced and enclosed area in the backyard of a Unit, the pet must be accompanied by a responsible individual and must be placed on a leash or subject to another device or method capable of controlling such pet at all times while the pet is outside its owner's Unit to promote the safety, health, and comfort of all Owners and guests in the Community. Any defecation left by any pet in or on any Common Area within the Development shall be immediately removed and disposed of by such pet's owner or custodian in a manner allowed by applicable laws and regulations

**7.07 Underground Utility Lines.** All water, gas, electrical, telephone, and other permanent utility lines within the limits of the Property must be buried underground and may not be exposed above the surface of the ground.

**7.08 No Smoking In Common Areas.** Smoking is restricted to areas within an Owner's Unit or lot that will prevent any and all smoke from being transmitted to a neighboring lot or Unit. Under no circumstances is smoking allowed in the Common Areas. Pursuant to Utah Code section 78B-6-1105, the Utah Legislature has adopted findings consistent with Federal EPA determinations that environmental tobacco smoke is a Group A carcinogen and that any exposure may cause respiratory diseases or disorders. Therefore, unless (i) the leases for the apartments within an Apartment Lot, or (ii) the Supplement governing certain townhomes or condominiums with the Community, clearly and specifically provides (a) that smoking is allowed in all of the apartments or attached Units, (b) that the occupants of such apartments or attached Units should expect smoke to drift into their apartment or Unit, and (c) that the



occupants is waiving his right to sue for the nuisance caused by the smoke, the Owner of any Unit shall have the right to sue to enjoin a nuisance pursuant to Utah Code section 78B-6-1101 if any smoke drifts into any other Unit or lot from another Unit, and the prevailing party shall be entitled to his or her reasonable attorneys' fees.

**7.09 Maintenance of Property.** All lots and Units and all improvements on any lot or Unit shall be kept and maintained by the Owner thereof in clean, safe, attractive and sightly condition, in good repair.

**7.10 No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any lot or Unit nor shall anything be done or placed on any lot or Unit which is or may become a nuisance or cause significant embarrassment, disturbance or annoyance to others.

**7.11 No Hazardous Activities.** No activities shall be conducted on any lot or Unit and no improvements shall be constructed on any lot or Unit which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace if such is permitted by City ordinances.

**7.12 No Unsightliness.** No unsightliness shall be permitted upon any of the Property. Without limiting the generality of the foregoing: (a) any unsightly structures, facilities, equipment, tools, boats and vehicles other than operating automobiles shall be enclosed within an approved building or appropriately screened from view, except equipment and tools when in actual use for construction, maintenance or repairs; (b) no trailers, mobile homes, tractors, truck campers, tractor trailers, storage pods, work trucks, or trucks other than family pickup trucks with a capacity of one ton or less shall be kept or permitted to remain upon the Property unless completely enclosed in a garage or a storage building approved pursuant to the Design Guidelines; (c) no vehicle, boat or equipment shall be constructed, reconstructed, repaired or abandoned upon the Property; (d) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on the Property, except in approved service yards meeting the requirements of Section 7.08 and any requirements of the Design Guidelines and the Design Review Committee; (e) refuse, garbage and trash shall be placed and kept at all times in a covered container and such container shall be kept within an enclosed structure or appropriately screened from view; (f) hanging, drying or airing of clothing or household fabrics shall not be permitted on lots or Units if visible from buildings, lots, Units, or areas surrounding the Property.

**7.13 No Annoying Lights, Sounds or Odors.** No light shall be emitted from any lot or Unit which is unreasonably bright or causes unreasonable glare or does not comply with the Rules and Regulations or Design Guidelines; no sound shall be emitted from any lot or Unit which is unreasonably loud or annoying, including without limitation, speakers, horns, whistles, bells or other sounds devices, except security and fire alarm devices used exclusively to protect

the Property or improvements thereon; and no odors shall be emitted from any lot or Unit which are noxious or offensive to others.

7.14 **Restrictions on Fences and Enclosures.** In order to maintain, as neatly as possible, an open atmosphere and feeling in the Community, the following shall apply:

(a) Front yard fencing shall be installed per the Design Guidelines, including without limitation the Technical Guidelines set forth in the MDA.

(b) The type and location of all fencing shall be consistent with the Design Guidelines, and any deviation from the Design Guidelines must be approved in writing by the Design Review Committee prior to installation.

(c) Except as specifically provided for in the Design Guidelines as amended and updated from time to time, there shall be no chain link fencing.

(d) Patio walls, fences, and enclosures not located upon a lot's property lines shall not be erected under any circumstance. Enclosures for pets may be erected only upon the written approval of the Design Review Committee and shall be fully screened from public view and located in the rear-yard of the lot.

7.15 **No Further Subdivision of lots.** No Unit shall be divided, subdivided, partitioned, parceled or broken up into smaller lots or units, except as approved by the Declarant as provided herein.

7.16 **Septic Tanks.** No septic tank shall be installed upon the Property.

7.17 **Fireplaces; Evaporative Coolers, Window Air Conditioners.** No Unit within the Community shall (a) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is fueled by natural gas only; or (b) contain a swamp cooler(s) or window air conditioner(s).

7.18 **Rules and Regulations.** No Owner shall violate the Rules and Regulations adopted from time to time by the Association. No such rules shall be established which violate the intention or provisions of this Declaration or which shall unreasonably restrict the use of any Unit by the Owner thereof. Pursuant to Utah Code section 57-8a-217(6), Declarant hereby reserves the right to exempt itself and its assigns from the Association rules and the rulemaking procedure under section 57-8a-217 until the Change of Control Date (i.e., during the period of administrative control).

7.19 **Drainage Preservation.** No Owner may alter or obstruct the established drainage pattern of runoff water or storm drainage into, from or across the Owner's lot or any other lots in the absence of specific approval by the Design Review Committee and the City. For purposes of this Declaration, "*established drainage*" on an unimproved lot is defined as the drainage pattern

and facility in existence at the time that such lot is conveyed to a purchaser by Declarant whether or not any Improvements are constructed thereon. The “*established drainage*” on an improved lot is defined as the drainage pattern and facility as shown in the engineered improvement plans whether or not any Improvements are constructed thereon.

7.20 **Trails.** No Owner shall have the right to alter or obstruct the maintenance, use or enjoyment of any trail adjacent to any Unit.

7.21 **Parking.** Parking of vehicles shall be allowed only in garages, driveways or other designated parking areas as approved by the Design Review Committee or the Board. Parking shall be allowed on private streets or alleys except in designated areas pursuant to signs placed on the street by the Board or City that specifically prohibits such parking.

7.22 **Protection of Vegetation; Landscaping.** No tree or other vegetation with a four inch diameter or greater trunk measured at least 3” above the natural soil line shall be removed without the prior approval of the Design Review Committee pursuant to the Design Guidelines. Vegetation shall be placed and maintained on all lots and in the common areas of the Community as provided in the Design Guidelines or in landscaping plans approved by the Design Review Committee. Landscaping on a Unit lot must be completed within the time frames set forth in the Design Guidelines, or if no deadline is set in the Design Guidelines, within one year after the transfer of the Unit from Declarant or a Builder to an Owner. The species of any trees planted on a lot shall be those set forth in the Design Guidelines or as otherwise first approved by the Design Review Committee.

7.23 **Excavations.** No excavation shall be made on lands subject to any Plat without the approval of both the Design Review Committee and any governmental entity with jurisdiction over such activity.

7.24 **Occupancy.** No lots or Units shall be used for human occupancy, either temporarily or permanently, until a Certificate of Occupancy is issued by the City. To avoid excessive traffic, noise, and excessive burdens on the use of the Common Areas, no Unit, other than Units designated on the Plat or in a Supplement as apartments, shall be occupied by more than a single family or housekeeping unit. Unless they constitute a single family or housekeeping unit within the meaning of Utah Code section 57-8a-218(4)(b)(i), no more than two roommates may share a Unit other than an apartment Unit.

## **ARTICLE 8 INSURANCE**

8.01 **Hazard Insurance.** The Association shall procure and maintain a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the structural Common Areas, if any, owned by the Association with an

Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

(a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and

(b) Such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.

**8.02 Fidelity Coverage.** The Association shall maintain fidelity coverage against dishonest acts on the part of managers, Directors, employees or volunteers responsible for handling funds collected and held for the benefit of the Association and the Members. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half (1 ½) times the Association's estimated annual operating expenses and total reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

**8.03 Waiver of Subrogation.** The Association hereby waives and releases all claims against the Board, the Owners, the Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or of a breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

**8.04 Liability Insurance.** The Association shall maintain a comprehensive policy of public liability insurance covering the Common Areas. Such insurance policy shall contain a "severability of interest" clause or endorsement, which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Coverage shall have limits of liability of not less than \$1,000,000 per occurrence for personal injury and/or property damage.

**8.05 Other Insurance and General.** The Association shall also maintain Worker's Compensation Insurance as required by law and may maintain other liability insurance as it may deem desirable, insuring each Owner and the Association, Board and any manager, from liability in connection with the Common Areas. Such insurance policies shall have severability of interest clauses or endorsements, which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners. Premiums for all insurance carried by the Association are Common Expenses.

8.06 **Unit Owners Policies.** Each Unit Owner shall be responsible to purchase and maintain in force appropriate hazard, content and liability insurance as such Owner shall determine to be appropriate to the Owner's needs and circumstances. The Association will not be required to file claims on any of its policies for any damage or liability claim that either should or would have been covered under any Owner's policy.

8.07 **Other Insurance Provisions.** All insurance required pursuant to this Article 8 shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article 8 to the contrary, any insurance required to be obtained by the Association pursuant to this Article 8 shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Areas or risks being insured.

## **ARTICLE 9 ENFORCEMENT**

9.01 **Remedies and Enforcement.** Declarant, the Association, any Owner, any Builder, and any Mortgagee, shall have the right to enforce this Declaration, the Design Guidelines and the Articles and Bylaws by appropriate proceedings at law or in equity, including the right to assess fines pursuant to the terms of this Declaration or to bring a proceeding to enjoin a violation thereof; *provided, however,* that only the Declarant or the Association shall have the right to enforce the liens and remedies provided herein with respect to the levy, collection, and enforcement of liens for any assessment allowed pursuant to this Declaration, including without limitation Common Assessments, Capital Improvement Assessments, Supplemental Assessments, Special Assessments, and Specific Assessments.

9.02 **Attorneys Fees and Costs.** Any and all costs to enforce this Declaration, the Design Guidelines, the Articles, Bylaws, or Rules and Regulations, including without limitation all reasonable attorneys' fees, shall be paid by the Owner causing such enforcement action by any violation of Declaration, Design Guidelines, Articles, Bylaws, or Rules and Regulations, and such costs shall be deemed to be a Specific Assessment against such Owner that does not require any vote of the Members.

9.03 **Nuisance.** Any act or omission resulting in a breach of this Declaration, the Design Guidelines, or the Articles or Bylaws is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such act or omission and may be exercised by Declarant, the Association, or any Owner.

9.04 **Cumulative Remedies.** All rights, options, and remedies of Declarant, the Association, or any Owner for the enforcement of this Declaration, the Design Guidelines, the Articles or Bylaws shall be deemed cumulative and none of such rights, options, or remedies shall be deemed exclusive.

9.05 **Waiver.** The failure to enforce any of the covenants contained in this Declaration, the Design Guidelines, the Articles, or Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

9.06 **Personal Covenant.** To the extent the acceptance of a conveyance of a lot or Unit creates a personal covenant between the Owner of such lot or Unit, other Owners, or the Association, such personal covenant shall *terminate and* be of no further force or effect from and after the date such Owner ceases to be the Owner of such lot or Unit except for the payment of moneys which came due to the Association during the period of such ownership.

9.07 **Fines.** At the sole but reasonable discretion of the Board, in addition to other legal remedies available to the Association, any violation of this Declaration or the Rules and Regulations of the Association adopted pursuant to this Declaration by an Owner or the invitee of an Owner shall subject such Owner to the monetary fines set forth in a resolution with a schedule of fines adopted by the Board, as such resolution and schedule may be updated or amended from time to time. These fines amounts may change in the applicable Rules and Regulations adopted from time to time and kept on file by the Association. Prior to the Change of Control Date, Declarant may modify or update the fine amounts by adopting new amounts as part of the Rules and Regulations for the Association, with Declarant hereby specifically exempted from the procedures set forth in Utah Code section 57-8a-217. After the Change of Control Date, the Board may modify or update the fine amounts by adopting new amounts as part of the Rules and Regulations for the Association, but such changes are subject to the procedures set forth in Utah Code section 57-8a-217. Under no circumstances must this Declaration be amended to change the amount of the fines. Any fines assessed by the Board shall be deemed to be Specific Assessments.

The schedule of fine amounts may be created, updated and amended from time to time by a written resolution of the Board which references this Section 9.07 of the Declaration, provided that such updated schedule shall be kept on file by the association for inspection by the Owners.

(f) Upon the cure or cessation of the violation, the Board may waive all or part of the fine in its sole discretion. The Association may enforce payment of these fines through court proceedings or enforcement of a Specific Assessment lien on the Unit of an Owner liable for the fine, wherein the Unit may be sold through the exercise of a power of sale pursuant to the remedies set forth in Section 11.16 below. The fines are not exclusive of other remedies available to the Association and may be levied and enforced in addition to other remedies, including injunctive relief or other causes of action. The Association shall have to right to seek an injunction to enjoin any violations of this Declaration or the Rule and Regulations promulgated thereunder. Any person liable for a fine hereunder shall be liable for all costs of the Association in attempting to enforce this

Declaration and collect such fine, including without limitation reasonable attorneys' fees. In addition, the balance of any fine that remains unpaid one month after notice that a Specific Assessment had been levied to collect a fine shall accrue interest at the rate of one and a half percent (1.5%) per month until paid in full.

(g) An Owner may request an informal hearing before the Board by filing a written request for the hearing with the Board no later than fourteen (14) days of the date the fine was assessed. Failure to timely file such a written request for a hearing waives any and all rights to protest or appeal the fine. An Owner must exhaust this administrative remedy before seeking to challenge or appeal the fine in a court of law. In such hearing, the Owner may be represented by an attorney and call fact and expert witnesses to testify before the Board, and the Owner or his attorney shall be allowed to ask questions of the Association officer that imposed the fine. However, the Board is not obligated to follow any formal rules of procedure and shall have the power to set reasonable limits on the length of testimony and to exclude duplicative testimony. No Special Assessment may be made and no interest may accrue until a final decision has been rendered by the Board. The Board may in its discretion appoint one or more persons, including without limitation paid professionals or staff, to serve as the hearing officer, conduct the hearing, and render the decision on behalf of the Board.

## **ARTICLE 10 RIGHTS OF MORTGAGEES**

**10.01 Title and Mortgagee Protection.** A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Unit or any other portion of the Property, except for the foreclosure of a lien for failure to pay an assessment after at least thirty (30) days written notice to the record holder of any Mortgage. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Unit or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give the same is wrongful). No amendment to this Declaration shall materially alter or affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment, provided that such protection of Mortgagees shall not be construed to prevent the Association from amendments providing for increased maintenance of the Common Areas, construction of new Improvements on the Common Areas, or making new assessments for the same.

**10.02 Preservation of Common Areas.** The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Community. Unless the Association shall receive the prior written approval of ninety percent (90%) of (a) all First Mortgagees of lots or Units, and (b) the Owners of all Units, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas in a way that is likely to reduce the value and utility of the Common Areas to the Owners, except no such consent shall be required to grant reasonable easements for utilities and similar or related purposes or as otherwise contemplated in this Declaration.

**10.03 Notice of Certain Matters Potentially Affecting Security.** The Association shall give written notice to any Mortgagee of a Unit specifically requesting from the Association such notice whenever:

(a) There is any material default by the Owner of the Unit subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within thirty (30) days after default occurs; or

(b) Damage to the Common Areas from any one occurrence exceeds One Hundred Thousand Dollars (\$100,000.00); or

(c) There is any condemnation or taking by eminent domain of any material portion of the Common Areas.

**10.04 Notice of Meetings.** The Board shall give to any Mortgagee of a Unit specifically requesting the same annually in writing from the Association, notice of all meetings of the Association; and such Mortgagee shall have the right to designate in writing a representative to attend any or all such meetings.

**10.05 Right to Examine Association Records.** Any Mortgagee shall, upon reasonable written request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Unit securing the Mortgage.

**10.06 Right to Pay Taxes and Charges.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

**10.07 No Priority Accorded.** No provision of this Declaration gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective



Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of Units, lots and/or the Common Areas.

10.08 **Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article 10, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

## **ARTICLE 11 ASSESSMENTS**

11.01 **Assessments.** The Association shall have the right and duty to levy and collect Common Assessments, Special Assessments, Capital Improvement Assessments, Supplemental Assessments, and Specific Assessments as provided in this Declaration and Article 11. The Board may require that payment of any of such Assessments, except Specific Assessments, be made to, and collected by the Association in monthly or periodic bulk payments as directed by the Board in its discretion.

11.02 **Common Assessments.** The Common Assessments levied by the Association shall be used to promote the common benefit, recreation and welfare of the Owners; to meet obligations imposed on, incurred or assumed by the Association; to cover costs, including overhead and administrative costs, for the operation of the Association; and the operation, management, maintenance, repair, and replacement of the Common Areas; *provided, however,* that Common Assessments shall not be used to meet the obligations imposed on the Association related to the maintenance of the exteriors of the Units. The Common Assessments shall also be used to establish reasonable Reserves, adequate in the discretionary but reasonable judgment of the Board, for maintenance, repair, and replacement of the Common Areas. Except for the Initial Common Assessment as set forth in subsections 11.02(c) below, Common Assessments shall be levied against each Unit and the Owner thereof and shall, at the discretion of the Board, be payable annually, quarterly, or in 12 equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; *provided, however,* the Common Assessments for the first fiscal year of the Association shall be based upon such portion of the fiscal year as follows the date of recordation of the Declaration in the Public Records and shall be payable in such installments and at such times as the Association, in the sole discretion of the Board, may determine.

(a) **Basis of Common Assessments.** The total Common Assessments shall be based on advance estimates of cash requirements by the Association to provide for payment of all estimated Common Expenses growing out of or connected with the operation of the Association and the operation, management, maintenance, and repair of the Common Areas, which estimates may include, among other things, expenses of snow removal, taxes, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, construction of improvements, repairs and maintenance,

wages for Association employees, compensation of a manager, legal and accounting fees, the creation of reasonable Reserves, surplus and/or sinking funds for the replacement of capital items and other purposes, repayment of any loans used for the other purposes herein, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners. Common Assessments shall be made on the basis of the Association's budget year (which may be a calendar year). Notice of the proposed assessment for any such year shall be mailed to each Owner not later than 30 days after the beginning of the budget year, together with an operating budget for the upcoming budget year. In making advance estimates of cash requirements, the Board may take into account the estimated collections from the Initial Common Assessment provided for in subsection 11.02(c) below. Common Assessments shall be assessed at a uniform rate for all Units.

(i) The budget shall itemize the estimated cash requirements for such budget year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Common Assessments for the upcoming fiscal year and as the major guideline under which the Community shall be operated during such fiscal year. The Board shall present the budget to Association Members at an annual meeting of the Members. After the Change of Control Date, the Members may disapprove a budget pursuant to the procedures set forth in Utah Code section 57-8a-215.

(ii) The failure of the Association to give timely notice of any Common Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date twenty (20) days after notice of such Common Assessment shall have been given to the Owner in the manner provided in Section 14.01.

(b) **Reserves.** Common Assessments may include reasonable amounts, as determined by the Board, collected as Reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Areas, or for any other purpose as determined by the Board. After the Change in Control Date, all amounts collected as Reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected. Said amounts shall be segregated from and not commingled with any other funds of the Association. Such Reserves shall be deemed contributions to the capital account of the Association by the Members.

(c) **Initial Common Assessment or Reinvestment Fee.** Pursuant to Utah Code section 57-1-46, to ensure adequate funding of the Association from the beginning of the Community, at the earlier of (i) the day and time of the first closing in which the Unit is transferred for the first time to an Owner other than Declarant or a Builder or (ii)

if no closing on a Unit has occurred because the Declarant has transferred the Unit to third party Builder, a date twelve (12) months after a certificate of occupancy of similar approval of completion is issued for the Unit, the Owner or buyer of the Unit after the transfer or issuance of the certificate, and each purchasing Owner on any subsequent transfer thereafter, shall pay to the Association an Initial Common Assessment as the Board may determine from time to time, but in no case exceeding one-half percent (1/2%) of (a) the total purchase price of the Unit, or (b) if no transfer of the Unit has yet occurred, the assessed value of the Unit as set forth in the official records in Salt Lake County.

(d) **Loans.** The Association may take out loans upon commercially reasonable terms to meet the obligations of the Association from time to time, and the Common Assessments shall be sufficient to service and pay off such loans according to their terms.

**11.03 Supplemental Assessment.** In addition to the Common Assessments, Supplemental Assessments shall be levied by the Association against the certain Units in the same manner as, and according to the same terms and conditions applicable to, the Common Assessments, *provided* that Supplemental Assessments shall be used for the maintenance of the Shared Lot Common Areas, Limited Common Areas, Service Areas representing less than all of the Community, the exteriors of certain Units, and other expenses that affect or benefit only a portion of the Community and which would be unfair to assess against all Units generally. Supplemental Assessments shall be assessed at a uniform rate for all lots benefited by such an assessment. The intent of this Section 11.03 is to allow the Association to allocate and assess the expenses incurred (or expected to be incurred) by the Association related to Unit exteriors, Shared Lot Common Areas, Limited Common Areas, and Service Areas to the extent the Board determines that the interest of the Association would be best served by having the Association to undertake such obligations rather than having the individual Owners perform such work separately, and this Section 11.03 shall be interpreted and applied in a manner consistent with such intent.

**11.04 Special Assessments.** If and when required, Special Assessments shall be levied to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise provided in the Articles, Bylaws, or in this Declaration, a Special Assessment in excess of \$500 per unit shall require the affirmative vote or written consent of a majority of Members in attendance at a special meeting called for this purpose with notice of the meeting provided as set forth in section 11.01 above. Special Assessments shall be payable in such manner and at such times, including installments over time, as the Board may determine.

**11.05 Capital Improvement Assessments.** If and when required, a Capital Improvement Assessment may be levied for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair or replacement of a capital improvement of or upon the Common Areas, including fixtures and personal property related thereto; *provided, however,* that any such assessment in excess of One Hundred Thousand Dollars (\$100,000) in any one

year shall require the affirmative vote or written consent of a majority of all outstanding Member votes. Capital Improvement Assessments shall be levied against each Unit and the Owner thereof shall be payable in such manner and at such times, including installments over time, as the Board may determine.

**11.06 Specific Assessment.** In addition to the Common Assessment and Supplemental Assessment and any Special Assessment or Capital Improvement Assessment authorized pursuant to Sections 11.02, 11.03, 11.04, and 11.05, above, the Board may levy at any time Specific Assessments (a) on every Unit especially benefited (i.e., benefited to a substantially greater degree than any other Unit) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the majority of the Owners of the lots or Units to be charged such assessments for a reasonably distinct area logically related to such an assessment, provided the Board agrees to make such an assessment; (b) on every Unit wherein the Owner, occupant or guest of an Owner of which shall violate this Declaration or the Rule and Regulations or otherwise cause any damage to the Common Areas necessitating repairs; and (c) on every Unit as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration or upon the written request of the Owner of the Unit to be charged. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected lots according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such Specific Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the lots or Units benefited.

**11.07 Creation of Lien and Personal Obligation of Assessment.** Pursuant to Utah Code section 57-8a-203 and this Declaration, each Owner of any Unit within the Community, by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Common Assessments, Special Assessments, Capital Improvement Assessments, Specific Assessments, or other assessments levied as provided herein. Each such assessment, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which the assessment is made. It shall have priority over any declaration of homestead recorded after the date on which this Declaration is recorded in the Public Records and shall continue until paid in full or otherwise satisfied. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore, and each such assessment, together with interest, late charges, collection costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due. The Board or its agents may foreclose the lien created by this Declaration or

Utah Code section 57-8a-203 in the manner provided in Utah Code sections 57-8a-203 and in section 11.15 below.

**11.08 No Offsets or Abatement.** All assessments shall be payable in the amount specified by the assessment, and no offsets or abatements against such amount shall be permitted for any reason, including, without limitation, a claim that (a) the Association is not properly exercising its duties and powers as provided in this Declaration, or (b) an Owner has made or elects to make no use of the Common Areas.

**11.09 Uniform Rate of Assessment.** All Common Assessments, Special Assessments, and Capital Improvement Assessments authorized by Sections 11.02, 11.04, and 11.05, respectively, shall be assessed and allocated among the owners of the lots or Units at a uniform rate for all lots and Units. Furthermore, all Supplemental Assessments authorized by Section 11.03 shall be assessed and allocated among the owners of the affected lots at a uniform rate for all such affected lots. Notwithstanding the foregoing or any provision to the contrary, until the earlier of (i) the date a Unit lot has been both fully improved with a dwelling and occupied for the first time for residential purposes or (ii) the Change of Control Date, the Board shall have the sole discretion to waive all or part of the Common Assessments, Supplemental Assessments, and Special Assessments otherwise applicable to a lot without a dwelling Unit, including without limitation waivers based on the distinction between (a) on the one hand, lots owned by Declarant or a Builder as inventory prior to final improvement and (b) on the other hand, lots occupied by or sold to other Owners. The Board shall be allowed to make a distinction between lots with occupied dwelling Units and other lots on the basis that unoccupied lots may not create expenses related to the Common Areas to the same extent as occupied Units.

**11.10 Homestead Waiver.** Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect or from time to time hereafter.

**11.11 Date of Commencement of Assessments.** Common Assessments and other assessments applicable to specific Common Areas and associated Improvements shall commence on the first day of the month following the conveyance of the Common Areas and associated Improvements to the Association.

**11.12 Reports to Members.** The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each budget year, and shall cause a copy of each such statement to be available for inspection by the Members at the annual Owner's meeting or pursuant to the written request of a Member. The Board shall also prepare and distribute to each Member with the delivery of notice of each new proposed Common Assessment as required pursuant to Section 11.02(a), a written, itemized estimate of the Common Expenses to be incurred by the Association during such new year in performing its functions under this Declaration as well as expected income and any surplus from

the prior year's assessments. Similar reports shall be delivered to the Owners of lots with respect to each new proposed Supplemental Assessments affecting such Units or lots.

11.13 **Excess Funds.** At the end of any fiscal year of the Association, the Board may determine that all excess funds of the Association, over and above the amounts used for any purpose, may be retained by the Association and used for Reserves, or to reduce the following year's Common Assessments.

11.14 **Remedies for Non-payment of Assessments.** Any installment of a Common Assessment, Special Assessment, Capital Improvement Assessment, Specific Assessment, or other assessment not paid within 10 days after the due date shall bear interest from the due date of such installment to the date paid at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within 10 days after it is due, the Owner responsible thereof shall be required to pay a late charge of ten percent (10%) of the amount of the delinquent installment or \$25, whichever is greater. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Unit, or do both if a deficiency is left after foreclosure. The lien against the Unit shall include, and the Owner shall be responsible for, any and all costs and charges incurred in connection with the collection of any delinquent assessments, and such related costs and charges shall include without limitation reasonable attorney's fees, court costs and every other expense incurred in enforcing any assessment hereunder. Failure to promptly enforce any remedy granted pursuant to this Section 11.16 shall not be deemed a waiver of any such rights. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or by abandonment of the Owner's Unit.

(a) **Notice of Default.** No action shall be brought to enforce any assessment lien herein, unless at least 30 days have expired following the date a Notice of Default is deposited in the United States mail, postage prepaid, to the Owner of the Unit, and a copy thereof has been recorded by the Association in the Public Records. Said Notice of Default must recite a good and sufficient legal description of the Unit, the record Owner or reputed Owner thereof, the amount claimed (which may include interest and late charges as provided in this Section 11.16, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association, City, or Declarant, as the case may be, as claimant. Such Notice of Default shall be signed and acknowledged by an officer of the Association, City, or Declarant, as the case may be.

(b) **Foreclosure Sale.** Any sale provided for above may be conducted by the Board, its attorney or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

(c) **Curing of Default.** Upon the timely curing of any default for which a Notice of Default was recorded by the Association, the Association shall record in the Public Records an appropriate Release of Lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Association to cover the cost of preparing and recording such release.

(d) **Certificate as to Indebtedness.** A certificate executed and acknowledged by any the Association stating the indebtedness secured by the liens created hereunder upon any Unit shall be conclusive upon the Association and the Unit Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith.

(e) **Cumulative Remedies.** The assessment liens and the rights of foreclosure and sale hereunder shall be in addition to, and not in substitution for, all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

11.15 **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Unit and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

11.16 **Subordination of Lien to First Mortgages.** The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Unit by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Unit; *provided, however*, that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply to such excess. No sale or transfer of a Unit in connection with any foreclosure of a first Mortgage shall relieve any Unit from the lien of any assessment installment thereafter becoming due.

11.17 **No Abatement.** No diminution or abatement of any assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Community; (b) the making of (or failure to make) any repairs or improvements to or the maintenance of any Common Areas, or

any part thereof; or (c) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

## ARTICLE 12

### GENERAL PROVISIONS

12.01 **Notices.** All notices to be given pursuant to this Declaration or the Bylaws shall be sufficient if given to the prescribed address by personal service, by guaranteed overnight delivery service, by deposit in the US Mail, postage prepaid, certified or registered mail, return receipt requested, *or* by electronic means such as e-mail to an electronic address for the recipient reasonably believed by the sender to be the electronic address of the intended recipient. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the next day after delivery to the guaranteed overnight delivery service, two (2) days after mailing certified or registered mail, or the next day after sending electronic notice. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any officer or Director of the Association or to the Association's Registered Agent as reflected in the Association's records at the Utah Department of Commerce, Division of Corporations and Commercial Code. Any notice required or permitted to be given to the Design Review Committee may be given by delivering or mailing the same to the Managing Agent or the Association or any member of the Design Review Committee.

12.02 **Successors and Assigns.** Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, the City, each Owner, and their respective heirs, personal representatives, successors and assigns. This Declaration shall run with and be binding upon the Property and each Unit or lot thereof. Declarant may assign its rights under this Declaration to a Development Assignee.

12.03 **Limited Liability.** Neither Declarant, the Association, the Board, the Design Review Committee nor any member, agent or employee of any of the same shall be liable to any party for any injury, damage, loss, cost or expense suffered by reason of any action or for failure to act with respect to any matter if the action taken or failure to act was in good faith and without notice.

12.04 **Duration of Declaration.** All provisions, covenants, conditions and restrictions contained in this Declaration shall continue and remain in full force and effect until there is recorded an instrument directing the termination of this Declaration that executed by (i) all of the Owners of the lots and Units, (ii) all First Mortgagees then subject to this Declaration, and (iii) the City.

12.05 **Use of Funds Collected by the Association.** All funds collected by the Association, including assessments and reserves paid by Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for not-for-profit purposes of



the Association in managing, maintaining, caring for, preserving and architecturally controlling the Property and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Member (other than as a result of the Association's managing, maintaining, caring for, preserving and architecturally controlling the Property and other than as a result of expenditures made for other permitted purposes set forth in this Declaration).

12.06 **Amendment.** Except as otherwise provided for in this Declaration, this Declaration may be revoked or amended as follows:

(a) The Declarant may unilaterally amend this Declaration at any time until the Change in Control Date, except that any change to the rights of the City hereunder shall not be made without the written consent of the City. Consent of the Members of the Association shall not be required until after the Change in Control Date.

(b) Subsequent to the Change in Control Date, this Declaration and amendments thereto may be amended by the affirmative vote or written consent of not less than sixty-six (66%) of each Class of outstanding Member votes (as such Classes are set forth in Section 1.02 of the Association Bylaws attached hereto as Exhibit B), except that any change to the rights of the City hereunder shall not be made without the written consent of the City.

(c) An amendment or revocation which only requires the execution of an instrument by Declarant shall be effective when executed by Declarant and recorded in the Public Records. An amendment which requires the affirmative vote or written consent of the Members shall be effective when executed by the President, Secretary, and attorney of the Association (who shall each certify in writing that the amendment has been so approved) and recorded in the Public Records.

(d) Notwithstanding the foregoing, any provision of the Articles, the Bylaws, or this Declaration, which expressly requires the approval of a specified percentage or specified percentages of the voting power of the Association or first Mortgagees for action to be taken under said provision, can be amended only with the affirmative vote or written consent of not less than the same percentage or percentages of the voting power of the Association and/or first Mortgagees.

12.07 **Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 14.07:

(a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Owner;

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed; and

(c) Any change in ownership of a Unit which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant, (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

**12.08 No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Community or the Property to the public, or for any public use.

**12.09 Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest in any Unit in the Community shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained, referred to or incorporated herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said Unit.

**12.10 Interpretation.** The provisions of this Declaration, including the Bylaws attached hereto as Exhibit B, shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Community. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation and construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. The term "person" shall refer to a person or entity. The terms "recorded and recordation" shall refer to recording in the Public Records. The word "shall" is deemed to be imperative and the word "may" is deemed to be permissive. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

**12.11 Severability.** Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision of this Declaration.

12.12 **Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

12.13 **Condemnation.** If at any time or times an insubstantial or minor part of the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary and reasonably feasible for restoring or replacing any improvements on the remainder of the Common Areas. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

12.14 **Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, the City, and all parties who heretofore acquired or hereafter acquire any interest in a lot or Unit, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a lot or Unit shall comply with, and all interests in all lots, all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration.

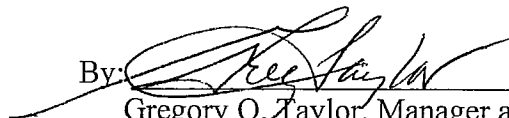
12.15 **Effective Date.** This Declaration and any amendment hereto, shall take effect upon its being filed for record in the Public Records.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

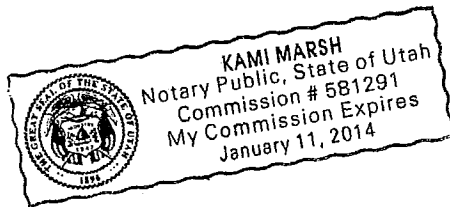
DECLARANT:  
Rosecrest Communities, LLC, a Utah  
limited liability company

By RE Management, L.L.C., its Manager

By:   
\_\_\_\_\_  
Gregory O. Taylor, Manager and  
Registered Agent

STATE OF UTAH                    )  
  :SS.  
COUNTY OF Salt Lake

The within instrument was acknowledged before me this 21 day of Febr. 2012, by Gregory O. Taylor in his capacity as a Manager and Registered Agent of RE Management, L.L.C., the manager of Rosecrest Communities, LLC, the Declarant and owner of the Property.



  
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NOTARY PUBLIC

## EXHIBIT B

### ASSOCIATION BYLAWS

**THE ASSOCIATION’S BYLAWS ARE HEREBY ADOPTED AS AN EXHIBIT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE ROSECREST COMMUNITIES PLANNED UNIT DEVELOPMENT (THE “DECLARATION”). The capitalized terms set forth in these Bylaws shall have the same meaning as the terms defined in section 2.01 and elsewhere in the Declaration. The Provisions of Article 12 of the Declaration shall be applicable to both the Declaration and these Bylaws.**

#### ARTICLE 1

#### BYLAWS - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1.01 **Name, Purpose and Membership.** The name of the Association is the Rosecrest Communities Master Homeowners Association, which Association has been created pursuant to the Declaration for the purpose of owning, maintaining and administering the Community’s Common Areas, administering and enforcing the Declaration, and of levying, collecting and disbursing the assessments and charges pursuant to the Declaration for the benefit of the Community. Every Owner upon acquiring title to a Unit shall automatically become a member of the Association and shall remain a member thereof until such time as such person’s ownership of such Unit ceases for any reason, at which time the membership in the Association with respect to such Unit shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to, and may not be separated from, the ownership of a Unit.

1.02 **Voting Rights.** The Association shall initially have two (2) classes of voting rights, votes of both classes being of equal value as to all matters. In other words, the total number of votes from each class shall be combined to determine the outcome of the vote. Because Declarant’s Class B votes will outnumber the class A votes until the Change in Control Date, Declarant shall have the ability to control the Board and the Association until the Change in Control Date.

(a) **Class A.** Each Owner (including Declarant) of a Unit (including without limitation a building lot upon which a dwelling may be constructed) shall be entitled to one Class A vote for each Unit for which such Owner holds the interest required for Association membership. Except for a Unit that is an Apartment Lot, which Unit is entitled to the number of Class Votes equal to the number of completed individual apartment units constructed on the Apartment Lot (see section 2.01(a) above), each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration.

(b) **Class B.** Declarant shall be the only person entitled to Class B voting rights which shall entitle Declarant to two (2) votes for each Class A voting right outstanding at the time (including those to which Declarant is entitled). The Class B votes of Declarant shall be in addition to the Class A voting rights held by Declarant by virtue of Declarant's ownership of Units, and Declarant's Class A voting rights shall not be affected in any way by the Class B rights of Declarant. Class B voting rights shall terminate and become a nullity on the Change of Control Date.

(c) The Declarant may, by Supplement, create additional classes of membership comprised of the owners of Units within any portion of the additional property submitted to this Charter. The Declarant shall specify in any such Supplement the rights, privileges, and obligations of the members of any class of membership created by that Supplement.

(d) Upon termination of the Class B voting rights, each owner of a Unit, including without limitation Declarant, regardless of whether a dwelling has been constructed on the lot, shall have equal voting rights as to all matters except as otherwise provided herein, such that each Owner shall be entitled to one vote for each Unit owned.

(e) The Change of Control Date shall occur upon the satisfaction of the first to occur of the following conditions precedent:

(i) the expiration of nine (9) months following the date on which all (100%) of the total outstanding Class A and Class B voting rights as authorized in the Community pursuant to the Development Plan are held by parties other than Declarant or Builders without a Supplement adding new Units owned by Declarant or Builders; or

(ii) the expiration of ten (10) days after surrender of the Class B voting rights by Declarant in a writing to the Association has been recorded in the Public Records; or

(iii) the date that is thirty (30) years after the recording of this Declaration in the Public Records.

1.03 **Multiple Ownership Interests.** In the event there is more than one Owner of a particular lot or Unit, the vote relating to such lot or such Unit shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the total number of votes appurtenant to such lot or Unit be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable lot or Unit unless an objection is made at the meeting or in writing by another Owner of the same lot or Unit, in which event no vote will be counted with respect to such lot or such Unit except to determine the presence or absence of a quorum.

1.04 **Voting.** Unless a greater than simple majority of the membership is specified as being required in the Articles, the Bylaws or elsewhere in this Declaration, such as the unanimous vote of all members required to terminate and dissolve the association pursuant to Section 2.02(c) below, the vote or approval of the Members shall require the approval of a simple majority of all eligible and outstanding Members' votes present in person or by proxy at a meeting of the Members at which a quorum is present.

1.05 **Records of Ownership.** Every Owner shall promptly cause to be duly filed a record in the Public Records the conveyance document (or in the case of a contract buyer, a copy of the sales contract or notice of interest) to him of his or her lot or Unit and shall file a copy of such conveyance document with the Association along with the email address for the Owner of the Unit, who shall maintain a record of ownership of the lots and Units. Any Owner who mortgages his or her lot or Unit or any interest therein shall notify the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the Association shall maintain all such information in the records of ownership. The Association may at any time obtain and rely on information from the Public Records regarding the Owners and Mortgagees of lots and Units.

1.06 **Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Association in the notice thereof.

1.07 **Annual Meetings.** Annual meetings of the membership of the Association shall be held each year beginning in the year this Declaration is recorded in the Public Records on such month, day and time as is set forth in the notice thereof; *provided, however*, that after the first such annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected members of the Board of Directors, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

1.08 **Special Meetings.** The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least twenty-five percent (25%) of the total votes of the Association and having been presented to the Secretary.

1.09 **Notice of Meetings.** The Association shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least ten (10), but not more than thirty (30), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

1.10 **Quorum.** Except as otherwise provided in the Declaration, Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special.

1.11 **Officers.** The Association shall have a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. The Board may, if needed, appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Board following each annual meeting of Owners at which the new Board has been elected; *provided, however*, that until the Board is elected by the Owners pursuant to Sections 1.13 and 1.07 of these Bylaws, the officers will be appointed by Declarant.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. The Secretary shall have charge of such books and records as the Board may direct and shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer, or their designee, shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board.

1.12 **Initial Composition of Board; Declarant Control.** Declarant alone shall have the right to select the initial Board of Directors and to determine the number of at-large Directors in Declarant's sole discretion, none of whom need be Owners. Such right of the Declarant to appoint any number of at-large Directors to the Board shall remain vested in Declarant until the termination of the Class B voting rights on the Change of Control Date as provided in Section 1.02(e), at which time the Association shall proceed to elect all members of the Board in accordance with the Association's Bylaws.



1.13 **Board of Directors; Owner Control; Composition, Election, Vacancies.** The Association, through its Board of Directors, is responsible for the maintenance of any Common Areas, the determination, imposition and collection of assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Community to the benefit and general welfare of the Owners. Subject to the provisions of Section 1.13 of these Bylaws, the Board shall be composed of at least three (3) but not more than five (5) Directors, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). The number of Directors shall be determined by the vote of the members at the first meeting of the Association after the Change in Control Date. At the first meeting of Owners to elect a Board of Directors, one shall be elected to a three-year term, one to a one-year term, and the remainder to a two-year term, unless the Association has voted to have five (5) Directors, in which case one of the remainder shall be elected to only a one-year term in such first meeting.

1.14 **Indemnification of Board.** Each of the Directors shall be indemnified and held harmless by the lot and Unit Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in connection with any proceeding in which such Director may become involved by reason of being or having been a member of the Board.

1.15 **Board Meetings, Quorum, Board Action.** The Board may establish its rules for meetings, whether regular or special. A majority of current Board members shall constitute a quorum. The action of a majority or those Directors attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Board. Action by consent shall require the unanimous consent of all current Directors.

## **ARTICLE 2 DUTIES AND POWERS OF THE ASSOCIATION**

2.01 **Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, Bylaws or the Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the City and for the maintenance and improvement of the Community:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Areas conveyed to it, whether by Declarant or by others, *provided* the same is free and clear of liens and encumbrances.
- (c) The Association shall maintain, repair and replace as necessary any and all Common Areas, including without limitation any roads within the Community that have not been dedicated to and accepted by the City.

(d) The Association shall maintain all landscaping and plantings upon the Common Areas of the Community.

(e) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, *provided* that the Association shall have the right to contest or compromise any such taxes or assessments.

(f) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.

(g) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable and as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon 90 days' written notice thereof; and the term of any such agreement shall not exceed two years, renewable by agreement of the parties for successive periods of two years each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

**2.02 Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit corporation, 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 the Declaration or the Bylaws, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any lot or Unit for the purpose of maintaining and repairing such lot or Unit or any improvement thereon if for any reason the Owner fails to maintain and repair such Unit, lot or Improvement as required herein. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, the Bylaws or any Rules and Regulations promulgated by the Board, or to enforce by injunction, fine, or otherwise all of the provisions of the Declaration, the Bylaws and such Rules and Regulations.

(b) In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas (or lots or

Units to the extent necessitated by the failure of the Owners of such Units and lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:

(i) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate;

(ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners;

(iii) Such utility services related to the Common Areas as the Board may from time to time deem necessary or desirable;

(iv) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(v) Fire, police and such other protection services as the Board may deem desirable or the benefit of the Owners or any portion of the Community; and

(vi) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

(c) Pursuant to 16-16(a)-716 of the Utah Revised Non-Profit Corporation Act and notwithstanding anything herein to the contrary, the Association will not cause a Dissolution and/or a Transfer without first obtaining (i) a vote of at least 90% of the Owners in each Class of voting rights approving a Dissolution and/or a Transfer, and (ii) the prior written consent of the City of Herriman, whereby the City of Herriman consents to a Dissolution and/or a Transfer.

**2.03 Association Rules and Regulations.** The Board from time to time, upon such notice to the Owners as required by Utah Code section 57-8a-217, and subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal and enforce reasonable Rules and Regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any streets, driveways or parking areas owned by the Association; (c) the collection and disposal of refuse; (d) uses and nuisances pertaining to the Community; and (e) all other matters concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Community.

**2.04 Limitation of Liability.** No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the

Association, its representatives and employees, the Board, any committee of the Board, or the Managing Agent.

2.05 **Incorporation by Reference.** To the extent reasonably applicable, the provisions of the Declaration are hereby included as part of the Bylaws of the Association, including without limitation the provisions of sections 12.01 through 12.03, 12.05, 12.07, 12.09 through 12.11, and 12.13 of Article 12 of the Declaration.

IN WITNESS WHEREOF, the foregoing Bylaws of the Rosecrest Communities Master Homeowners Association have been duly adopted by the Board.

By: \_\_\_\_\_  
Michael Bradshaw, Association President