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**DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
THE COMMUNITIES AT DEER CREST**

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**DECLARATION OF COVENANTS, CONDITIONS**

**EASEMENTS AND RESTRICTIONS**

**FOR**

**THE COMMUNITIES AT DEER CREST**

This DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS for THE COMMUNITIES AT DEER CREST is made this 3<sup>rd</sup> day of November, 2005, by Solare Land Holdings, LLC, a Utah limited liability company (the "Declarant" as hereinafter defined).

**RECITALS**

A. Declarant (or an affiliate of Declarant) holds both legal and equitable title to certain real property located in the County of Cache, State of Utah, which is described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. Declarant desires to develop a planned community known as The Communities at Deer Crest, as shown on the Plat (the "Project"). At full development, the Project will contain various Lots and Dwellings and may include without limitation, condominium units, apartment units, patio or zero lot line homes, town homes, and single-family or multifamily houses, open spaces, walkways, and various other amenities and improvements.

C. The Project possesses great natural beauty which Declarant intends to preserve through the use of a coordinated plan of development and the terms of this Declaration. It is anticipated that the plan will provide for comprehensive land planning, harmonious and appealing landscaping and improvements. It is assumed that each purchaser of property in the Project will be motivated to preserve these qualities through community cooperation and by complying with not only the letter but also the spirit of this Declaration. This Declaration is designed to complement local governmental regulations, and where conflicts occur, the more restrictive requirements shall prevail.

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D. It is desirable for the efficient management and preservation of the value and appearance of the Project to create a nonprofit corporation to which shall be assigned the powers and delegated the duties of managing certain aspects of the Project; maintaining and administering the Common Area; administering, collecting and disbursing funds pursuant to the provisions regarding assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Project and the Owners. The Communities at Deer Crest Owners Association, Inc., a Utah non-profit corporation, has or will be incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions aforesaid ("Association").

E. Each Owner shall receive fee title to his or her Lot or Dwelling and Membership in the Association as provided herein.

F. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and the interests therein conveyed and to establish thereon a planned community.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

**ARTICLE 1**

**DEFINITIONS**

Unless the context clearly indicates otherwise, the following words, phrases or terms used in this Declaration (including that portion hereof headed "Recitals") shall have the meanings set forth in this Article 1. (Certain terms not defined herein are defined elsewhere in this Declaration.)

1.1 "Annual Assessments" means the Assessments levied pursuant to Section 7.2.

1.2 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

1.3 "Assessable Property" means each Lot or Dwelling, except for Exempt Property.

1.4 "Assessment" means an Annual Assessment, Special Assessment or Cottage Maintenance Assessment

1.5 "Assessment Lien" means the lien created and imposed by Article 7.

1.6 "Association" means THE COMMUNITIES AT DEER CREST OWNERS ASSOCIATION, INC., a Utah nonprofit corporation, and its successors and assigns.

1.7 "Board" means the Board of Trustees of the Association.

1.8 "Bylaws" means the bylaws of the Association, as amended from time to time.

1.9 "City" means the City of Logan or any other municipality or other governmental agency or entity having jurisdiction over the Project.

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1.10 "Common Area" means: (a) all land, and the Improvements situated thereon, within the Project which Declarant designates as Common Area on the Plat or other Recorded instrument; (b) any real property or Improvements within the Project that the Association has the obligation to maintain, repair or replace for the common benefit of the Owners; and (c) any portion of the Project which is owned by the Association for the benefit of the Owners. The Common Area may include but is not limited to perimeter walls, multi-purpose recreational

trails, parks and related Improvements, private streets, sidewalks, landscaping, and other similar Improvements.

1.11 “Common Expenses” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves as further described in Section 7.2.1.

1.12 “Cottage Lots” means those Lots in the Project designated as Cottage Lots on the Plat.

1.13 “Cottage Lot Maintenance Assessment” means the assessments for maintenance of the Cottage Lots levied pursuant to Section 7.3.

1.14 “Declarant” means SOLARE LAND HOLDINGS, LLC, a Utah limited liability company, or its successors, and any Person to whom it may expressly assign any or all of their rights under this Declaration.

1.15 “Declarant Affiliate” means any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.16 “Declaration” means this Declaration of Covenants, Conditions, Easements and Restrictions for The Communities at Deer Crest, as amended from time to time.

1.17 “Design Guidelines” means the written review standards, if any, promulgated by the Design Review Committee pursuant to this Declaration.

1.18 “Design Review Committee” means the design review committee created pursuant to this Declaration.

1.19 “Developer” means any Person (other than Declarant) who is in the business of developing, selling or leasing real property and who acquires one or more Lots in connection with, and in the course of, such business, for the purpose of developing, selling or leasing Dwellings.

1.20 “Development Plan” means the Plat, any development plan for the Project and other documents showing and/or identifying the various Lots, as each is amended by Declarant from time to time.

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1.21 “Dwelling(s)” means a separate residential dwelling unit intended for independent ownership and residential use together with garages and/or other attached Improvements on the same Lot, including without limitation, condominium units, apartment units, patio or zero lot line homes, town homes, and single-family houses on separately platted Lots, as may be developed, used, and defined as provided in the Governing Documents. The term “Dwelling” as sometimes used herein contemplates that such Dwelling is owned, conveyed or mortgaged as a separate Dwelling of real property.



1.22 “Exempt Property” means:

1.22.1 All land and Improvements owned by, or dedicated to and accepted by, the United States, the State of Utah, the City, or any political subdivision of any of them, for as long as such entity or political subdivision is the owner thereof or for as long as said dedication remains effective;

1.22.2 All Common Area; and

1.22.3 Each other property while owned by Declarant or a Declarant Affiliate, until the earliest to occur of (i) the acquisition of its record title by a Developer or other Person, other than Declarant or a Declarant Affiliate or (ii) the sixtieth (60th) day after the City issues a certificate of occupancy for the first Dwelling or Improvement hereafter constructed thereon.

1.23 “Governing Documents” means this Declaration, the Articles, the Bylaws, the Project Rules and Board resolutions of the Association, as each document may be amended from time to time.

1.24 “Improvement(s)” means any improvement now or hereafter constructed at the Project and includes anything which is a structure and appurtenances thereto of every type and kind, including but not limited to any building, out building, structure, walkway, garage, road, driveway, parking area, screening wall, shed, covered patio, stairs, deck, fountain, pool, radio or television antenna or receiving dish, paving, curbing, landscaping, hedges, windbreak, planting, planted trees and shrubs, tank, fence, mailbox, sign, exterior lights, any excavation, fill, ditch, diversion, dam, retaining wall or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel, and related fixtures and equipment.

1.25 “Lessee” means the lessee or tenant under a lease, oral or written, of any Lot, Dwelling or Improvement (or part thereof), including a sublessee or an assignee of the lessee’s or tenant’s interest under a lease.

1.26 “Lot(s)” means a portion of the Project intended for independent ownership and residential use and designated as a lot on the Plat, and, where the context indicates or requires, shall include any Dwelling, building, structure or other Improvements situated on the Lot.

1.27 “Member” means any Person who is a member of the Association as provided in Article 5.

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1.28 “Mortgage” means a deed of trust or a mortgage Recorded against a Dwelling.

1.29 “Mortgagee” means a beneficiary under a deed of trust, or a mortgagee under a mortgage, Recorded against a Dwelling, and “First Mortgagee” means such a beneficiary or mortgagee under a First Mortgage.

1.30 “Occupant” means any Person other than an Owner who has actual use, possession or control of a Dwelling, or any portion thereof or Improvement thereon, and shall include, without limitation, residents who reside in any Dwelling.

1.31 “Owner” means the Person or Persons who individually or collectively own fee title to a Lot, Dwelling or Improvement, including a Developer or Declarant, and vendees under installment purchase contracts. “Owner” shall not include Persons who hold an interest in a Lot, Dwelling or Improvement merely as security for the performance of an obligation.

1.32 “Person” means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.33 “Plat” shall mean that certain planned unit plat entitled “The Communities at Deer Crest” duly Recorded, as the same may be amended from time to time, and which is incorporated herein by this reference.

1.34 “Project” means the term set forth in Recital B.

1.35 “Project Rules” means the rules adopted by the Board pursuant to Section 5.3, as amended from time to time.

1.36 “Property” means the term set forth in Recital A.

1.37 “Purchaser” means any Person, other than Declarant, who by means of a voluntary transfer becomes the Owner of a Dwelling, except for: (a) a Person who purchases a Dwelling and then leases it to Declarant for use as a model in connection with the sale or lease of other Dwellings; or (b) a Person who, in addition to purchasing a Dwelling, is expressly assigned any or all of Declarant’s rights as Declarant under this Declaration; or (c) a Developer.

1.38 “Record,” “Recording,” “Recorded” and “Recordation” means placing or having placed an instrument of public record in the official records of Cache County, Utah.

1.39 “Single Family” means (i) an individual living alone in a Dwelling; (ii) two or more persons related by blood, marriage, or adoption, living together in a Dwelling and maintaining a common household; or (iii) two, but not more than two, unrelated persons living together in a Dwelling. The term “Single Family” shall not be construed to mean a group or unrelated individuals, a fraternity, club or institutional group.

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1.40 “Special Assessment” means any Assessment levied pursuant to Section 7.5.

1.41 “Visible From Neighboring Property” means, with respect to an object, that the object is or would be visible to a six-foot tall person standing at ground level on any part of neighboring property, except where the object is visible solely through a wrought iron fence and would not be visible if the wrought iron fence were a solid fence.

**ARTICLE 2**

**DEVELOPMENT PLAN AND DECLARANT'S RIGHTS  
AND OWNERS' OBLIGATIONS**

2.1 Property Initially Subject to this Declaration. This Declaration is being Recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners.

2.2 Withdrawal of Property. At any time on or before December 31, 2020, the Declarant shall have the right to withdraw property from the Project without the consent of any other Owner or Person (other than the Owner of such property, if other than the Declarant). The withdrawal of all or any portion of the Project shall be effected by the Declarant Recording a written instrument setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from the Project pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

2.3 Lots. The Project shall initially consist of ninety-four (94) Lots, each of which is to be improved with one or more Dwellings and various Improvements. Declarant reserves the right to increase and decrease the number of Lots in the Project subject to approval of the City. Moreover, Declarant reserves the right to adjust the location and size of each Lot in order to facilitate proper planning in the sole and exclusive discretion of Declarant. Declarant shall effectuate such relocations and adjustments by Recording an amendment to the Plat, and the City and all Owners acknowledge and agree that no amendment to this Master Declaration shall be required to effectuate any such adjustments. Declarant reserves the right to allocate the specific number of Dwellings, Common Area and Improvements to be constructed on each Lot. Declarant further reserves the right to create on one or more Lots, a condominium project, pursuant to the provisions of the Utah Condominium Ownership Act. Declarant shall also have the right to sell, convey, transfer, assign or otherwise dispose of any Lot, without first constructing a Dwelling thereon. Any purchaser, transferee or Owner of a vacant Lot shall be entitled to construct a Dwelling thereon, subject to the approval or supervision of Declarant as set forth in this Declaration and the Design Guidelines.

2.4 The Association. The Association shall maintain the Common Area and all Improvements thereon, in a safe, sanitary and attractive condition. Such maintenance responsibility shall include, but shall not be limited to, the control of all weeds and other unsightly vegetation, rubbish, trash, garbage and landscaping Visible From Neighboring Property. The Association shall assess and collect fees from its Members, in accordance with the provisions hereof.

2.5 Incidents of Ownership. Every Owner of a Lot or Dwelling shall be a member of the Association, and a nonexclusive easement for each Owner for use, enjoyment, ingress and egress over the Common Area subject to such restrictions and limitations as are contained in the Governing Documents and subject to other reasonable regulation by the Association. Such interests shall be appurtenant to and inseparable from ownership of the Lot or Dwelling. Any sale, conveyance, hypothecation, encumbrance or other transfer of a Lot or Dwelling shall automatically transfer these interests to the same extent, notwithstanding any term or provision to the contrary in the documents effecting such transfer.

2.6 Owner's Obligation to Maintain Lot, Dwelling or Improvement. Each Owner shall maintain his, her or its Lot, and all Dwelling and Improvements thereon, in a safe, sanitary and attractive condition. In the event that an Owner fails to maintain his, her or its Lot, Dwelling or Improvement as provided herein in a manner which the Board reasonably deems necessary to preserve the appearance and/or value of the Project, the Board may notify the Owner of the work required and demand that it be done within a reasonable and specified period. In the event that the Owner fails to carry out such maintenance within said period, the Board shall have the right to enter upon the Lot, Dwelling or Improvement to cause such work to be done and individually charge the cost thereof to such Owner. Notwithstanding the foregoing, in the event of an emergency arising out of the failure of an Owner to maintain his, her or its Lot, Dwelling or Improvement, the Board shall have the right to immediately enter upon the Lot, Dwelling or Improvement to abate the emergency and individually charge the cost thereof to such Owner.

2.7 Association's Obligations to Maintain Cottage Lots. The Association shall maintain and keep properly cultivated the landscaping on a Cottage Lot, including, all shrubs, trees, hedges, grass and plantings of every kind located outside each Dwelling on a Cottage Lot. The Association shall also maintain in good order and repair the exterior walls and roofs of each Dwelling located on a Cottage Lot. The cost for such maintenance shall be paid out of the Cottage Maintenance Assessment. Notwithstanding the foregoing, the cost of repair or replacement of landscaping on a Cottage Lot or of the exterior walls and roof of a Dwelling on a Cottage Lot, resulting from the willful or negligent act of an Owner, Occupant, Lessees, tenants, family, guests or invitees, shall be, in addition to the party at fault, the joint responsibility of such Owner. The Association shall cause such repairs and replacements to be made and the cost thereof may be levied as an individual charge against such Owner.

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2.8 Responsibility for Common Area Damage. The cost of repair or replacement of any portion of the Common Area resulting from the willful or negligent act of an Owner, Occupant, Lessees, tenants, family, guests or invitees shall be, in addition to the party at fault, the joint responsibility of such Owner to the extent that it is not covered by insurance maintained by the

Association. The Association shall cause such repairs and replacements to be made and the cost thereof may be levied as an individual charge against such Owner.

2.9 Reservation of Right to Construct Dwellings and Improvements. In addition to the reservations of rights set forth in this Declaration, Declarant reserves the sole and exclusive right to construct or to directly supervise the construction of all Dwellings and Improvements to be erected on the Lots which are a part of the Project in order to protect its integrity and control the grading and site elements relative to each particular Lot.

2.10 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that: (a) the Project will be completed in accordance with the Development Plan for the Project as it exists on the date this Declaration is Recorded; (b) any property subject to this Declaration will be committed to or developed for a particular use or for any use; or (c) the use of any property subject to this Declaration will not be changed in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesperson representing Declarant or any Developer shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration.

2.11 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than they otherwise might be. The Association and Declarant shall not in any way be considered insurers or guarantors of security within the Project. Further, the Association and Declarant shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners, Occupants, Lessees, tenants, guests and invitees of any Owner or Occupant, as applicable, acknowledge that Declarant, the Association and its Board, and the Design Review Committee do not represent or warrant that any fire protection system or burglar alarm system designated by or installed according to the Design Guidelines may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner, Occupant, Lessee, tenant, guest or invitee of an Owner or Occupant, as applicable, acknowledges and understands that Declarant, the Association and its Board, and the Design Review Committee are not insurers and that each Owner, Occupant, Lessee, tenant, guest and invitee assumes all risks for loss or damage to Persons, to Lots, Dwellings, Improvements and to the contents of Dwellings and Improvements and further acknowledges that Declarant, the Association and its Board, and the Design Review Committee have made no representations or warranties nor has any Owner, Occupant, Lessee, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

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2.12 Development Plan. Notwithstanding any other provision of this Declaration to the contrary, Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the Development Plan with respect to any Property

owned by Declarant in any way which Declarant desires including, but not limited to, changing the location and density of all or any portion of the Property owned by Declarant or changing the nature or extent of the uses to which such Property may be devoted.

**ARTICLE 3**

**LAND USES, PERMITTED USES AND RESTRICTIONS**

3.1 Land Uses. The purposes for which property within the Project may be used shall be established by Declarant in its sole and exclusive discretion, and may include, without limitation, single-family detached residential use, residential condominium use and other residential uses consistent with the Development Plan, as well as ancillary, complementary or subsidiary uses such as (without limitation) public or private pedestrian trails, public or private parks, open space, Common Area and the like.

3.2 Use Restrictions. Except as otherwise provided herein, each Lot may be used in any manner consistent with the requirements of applicable zoning and other land use ordinances and regulations, including the construction of one or more Dwellings in accordance with the Governing Documents. The Lots, Dwellings, Common Area and Improvements, except as otherwise permitted in writing by the Association and/or Declarant as applicable, shall be used in accordance with the restrictions outlined in the Governing Documents.

3.3 Architectural Control. All Dwellings and Improvements constructed within the Project shall comply with the Design Guidelines and the following requirements:

3.3.1 All Improvements constructed within the Project shall be of new construction, and no intact buildings or other structures shall be moved from other locations to the Project (except for construction and sales trailers or similar facilities approved in advance by the Design Review Committee).

3.3.2 No devegetation, excavation, grading, planting or revegetation work shall be performed within the Project without the prior written approval of the Design Review Committee. Further, the Design Review Committee may set forth in the Design Review Guidelines regulations concerning the types of plants and trees that may be planted on each Lot.

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3.3.3 No Improvement shall be constructed, installed or removed within the Project without the prior written approval of the Design Review Committee. The Design Review Committee may set forth in the Design Review Guidelines regulations concerning the location of Improvements on a Lot and the type, style and color of materials that may be used to construct Improvements. The Design Review Committee may also determine that type, style and color of materials that may be used for fencing and also the location on each Lot, if any, where fences may be installed.

3.3.4 No addition, alteration, repair, change or other work which in any way alters the exterior appearance (including but without limitation, the exterior color scheme) of any property within the Project, or any Improvements located thereon, shall

be made or done without the prior written approval of the Design Review Committee, nor shall any Lot be split, divided or further subdivided in any manner without the prior written approval of the Design Review Committee.

3.3.5 Any Owner or other Person desiring approval of the Design Review Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of his, her or its Lot or other portion of the Project, or any Improvements located thereon, shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change, replacement or other work which such Owner or other Person desires to perform. Any Owner or other Person requesting the approval of the Design Review Committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may reasonably request. In the event that the Design Review Committee fails to approve or disapprove an application for approval within forty-five (45) days after the application, together with all supporting information, plans and specifications required by the Design Review Guidelines or reasonably requested by the Design Review Committee, have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner or other Person who submitted such application for approval.

3.3.6 The approval by the Design Review Committee of any construction, installation, addition, alteration, repair, change, replacement or other work pursuant to this Section shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, replacement or other work subsequently submitted for approval.

3.3.7 Upon receipt of approval from the Design Review Committee for any construction, installation, addition, alteration, repair, change, replacement or other work, the Owner or other Person who has requested such approval shall proceed to perform, construct or make the installation, addition, alteration, repair, change or other work approved by the Design Review Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Design Review Committee.

3.3.8 Any change, deletion or addition to the plans and specifications approved by the Design Review Committee must be approved in writing by the Design Review Committee.

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3.3.9 The Design Review Committee shall have the right to charge a reasonable fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change, replacement or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. Such fee, if established and charged by the Design Review Committee, shall be set at such reasonable level as the Design Review Committee may estimate will be necessary to defray the reasonable costs and expenses of the Design

Review Committee in reviewing and evaluating any such request or application, and may include, if the Design Review Committee deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the Design Review Committee by an architect or engineer.

3.3.10 The approval required of the Design Review Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation, or under any other Recorded instrument. The Design Review Committee may condition its approval of any application, plans or other items submitted to it on delivery to the Design Review Committee of evidence satisfactory to the Design Review Committee that the Owner or other Person seeking its approval has also made appropriate applications for (and prior to commencing work shall have obtained) any and all such other approvals or permits. The Design Review Committee shall cooperate reasonably with any other approving authorities or entities, provided, however, that the Design Review Committee shall not be bound by any approvals, permits or other decisions of any other such approving authority or entity.

3.4 Occupancy by Families. The use of each Dwelling shall be limited to Single Family residential use.

3.5 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Design Review Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Design Review Committee.

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3.6 Maintenance of Landscaping. Each Owner of a Lot shall properly maintain and keep properly cultivated, and free of trash, weeds and other unsightly material, all shrubs, trees, hedges, grass and plantings of every kind located on: (a) his, her or its Lot; (b) any public right-of-way or easement area which abuts or adjoins the Owner's Lot and which is located between the boundary line of his, her or its Lot and the paved area of any street, sidewalk, bike-path or similar area (unless otherwise directed by the Board); and (c) any non-street public right-of-way or easement area adjacent to his Lot (unless otherwise directed by the Board); provided, however, that such Owner shall not be responsible for maintenance of any area over which: (i) the Association is required to maintain pursuant to the Governing Documents; (ii) the Association assumes the responsibility in writing; or (iii) the City assumes responsibility, for so long as the City assumes or has responsibility. For purposes of this Section 3.6, proper maintenance of landscaping shall include, without limitation, removal and replacement of dead landscaping, subject to the Design Review Guidelines. Notwithstanding anything to the contrary herein, portions of a Lot may be maintained with natural ground cover and growth as permitted by the Design Review Committee.



3.7 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors, loud noises or loud music shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon or adjacent to any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but during construction periods, Lots and other property shall be kept in a neat and tidy condition, trash and debris shall not be permitted to accumulate, supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved in writing by the Design Review Committee, and no loud music shall be permitted. In addition, any construction equipment and building materials stored or kept on any Lot or other property during the construction of Improvements may be kept only in areas approved in writing by the Design Review Committee, which may also require screening of the storage areas. The Design Review Committee or the Board, in their sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

3.8 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious diseases or noxious insects.

3.9 Repair of Building. No Dwelling, building, structure or other Improvement on any Lot or other property shall be permitted to fall into disrepair and each such Dwelling, building, structure and other Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Dwelling, building, structure or other Improvement is damaged or destroyed, then, subject to the approvals required by Section 3.3, such Dwelling, building, structure or other Improvement shall be immediately repaired or rebuilt or shall be demolished.

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3.10 Antennas, Poles, Towers and Dishes. No television, radio, shortwave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon any Lot or other part of the Property unless such antenna, pole, tower or dish is fully and attractively screened or concealed so as not to be Visible From Neighboring Property, which means of screening or concealment shall be subject to the regulation and prior approval of the Design Review Committee. Notwithstanding the foregoing, the Design Review Committee may adopt a rule or regulation permitting an Owner or Occupant to install and maintain a flagpole upon the Owner's or Occupant's Lot, provided that the location and size of such flagpole (and the number and size of any flag(s) mounted thereon) may be regulated by the Design Review Committee and may, if so provided in such rule or regulation, be made subject to the prior approval thereof by the Design Review Committee. Nothing in this Section shall be deemed to prohibit the Declarant from installing and maintaining flagpoles on, at or adjacent to model homes within the Project. Poles to which basketball backboards, goals and related equipment are affixed shall be governed by Section 3.32.

3.11 Mineral Exploration. No Lot or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by the Declarant.

3.12 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or other property except in sanitary, covered containers of a type, size and style which are approved by the Design Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be maintained on any Lot or other property.

3.13 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or other property so as to be Visible From Neighboring Property.

3.14 Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Design Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures for emergency purposes or incident to the construction of buildings or structures approved by the Design Review Committee. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with any requirements, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing any such meter, panel or other equipment on the outside front wall of a residence or other building facing the street running directly in front of such residence.

3.15 Overhead Encroachments. No tree, shrub or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, bicycle path or pedestrian way from ground level to a height of eight (8) feet without the prior approval of the Design Review Committee.

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3.16 Health, Safety and Welfare. In the event additional uses, activities or facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Occupants, the Board may make rules restricting or regulating their presence in the Project as part of the Project Rules or may direct the Design Review Committee to make rules governing their presence on Lots or other property as part of the Design Review Guidelines.

3.17 Model Homes. Any provisions of this Declaration which prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance

of model homes or other model Dwellings of any kind (including, without limitation, any used in whole or in part as sales offices) by Persons engaged in the construction of Dwellings in the Project, or parking incidental to the visiting of such models, so long as the construction, operation and maintenance of such models and parking otherwise comply with all of the provisions of this Declaration. The Design Review Committee may also permit Lots and other areas to be used for parking in connection with the showing of models. Any homes or other structures constructed as models shall cease to be used as models at any time the Owner thereof is not actively engaged in the construction and sale of Dwellings in the Project, and no home or other structure shall be used as a model for the sale of homes or other structures not located in the Project. Neither the provisions of this Section nor the provisions of any other Section of this Declaration shall restrict or prohibit the right of the Declarant or a Declarant Affiliate to construct, operate and maintain models in the Project.

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3.18 Incidental Uses. The Design Review Committee may approve uses of property within a particular land use which are incidental to the full enjoyment of the Owners and Occupants of the property within that land use. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Design Review Committee may wish to impose, in its sole discretion, for the benefit of the Project as a whole.

3.19 Residential Use and Trades or Businesses. All Lots and Dwellings shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Dwelling, except that an Owner or other Occupant may conduct a business activity in a Dwelling so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (b) the business activity conforms to all applicable zoning ordinances or requirements; (c) the business activity does not involve the door-to-door solicitation of Owners or other Occupants in the Project; (d) the use of the Dwelling for trade or business shall in no way destroy or be incompatible with the residential character of the Dwelling or the surrounding neighborhood; (e) the trade or business shall be conducted only inside the Dwelling or inside an accessory building or garage, and shall not involve the viewing, purchase or taking delivery of goods or merchandise at, to, from or in any Dwelling; (f) the trade or business shall be conducted by an Owner or Occupant(s) of the Dwelling; (g) no more than twenty percent (20%) of the total floor area of the Dwelling shall be used for trade or business; (h) the Dwelling used for trade or business shall not be used as a storage facility for a business conducted elsewhere; (i) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood; (j) a trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (k) a trade or business shall not utilize large vehicles not customary to a residential use. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. The leasing of a Dwelling by the Owner thereof shall not be considered a trade or business within the meaning of this Section; provided, however, that any lease or rental

agreement shall have a term of at least thirty (30) days and no Lot or Dwelling may be leased or rented for less than thirty (30) consecutive days at a time.

3.20 Animals. No animal, livestock, poultry or fowl of any kind, other than a reasonable number of house pets, shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing or confinement of any pet shall be Visible From Neighboring Property. Notwithstanding the foregoing, no pets may be kept on or in any Lot which, in the opinion of the Board, result in an annoyance to other Owners or Occupants in the vicinity. All pets shall be leashed when not on property owned by the pet's owner or on which the pet's owner is a Occupant or guest, and persons walking any pet shall promptly and properly remove and dispose of the pet's waste.

3.21 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except: (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or other Improvements; and (b) that which Declarant or the Association may permit or require for the development, operation and maintenance of the Project.

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3.22 Signs. No signs whatsoever (including, but not limited to commercial, political, "for sale," "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

3.22.1 Signs required by legal proceedings.

3.22.2 Dwelling identification signs provided the size, color, content and location of such signs have been approved in writing by the Design Review Committee.

3.22.3 Signs of Developers approved from time to time by the Design Review Committee as to number, size, color, design, message content, location and type.

3.22.4 Signs (including "for sale" and "for lease" signs) the nature, number and location of which have been approved in advance and in writing by the Design Review Committee.

3.22.5 Such construction job identification signs and subdivision identification signs which are in conformance with the requirements of the City and which have been approved in writing by the Design Review Committee as to number, size, color, design, message content and location.

3.23 Required Approvals for Further Property Restrictions.

3.23.1 All proposed site plans and subdivision plats for any Lot, or any portion thereof, must be approved in writing by the Design Review Committee prior to Recordation thereof or commencement of construction on the applicable Lot. No Lot, or

portion thereof, shall be further subdivided, no lot lines or boundaries may be modified, and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Design Review Committee.

3.23.2 No further covenants, conditions, restrictions, or easements shall be Recorded against any Lot, or portion thereof, without the prior written approval of the Design Review Committee.

3.23.3 No applications for rezoning, variances or use permits, or for waivers of or modifications to existing variances, use permits, zoning stipulations or similar restrictions, shall be filed with any governmental authority or agency without the prior written approval of the Design Review Committee, and then only if such proposed zoning, variance or use, or waiver or modification, is in compliance with this Declaration.

3.23.4 No subdivision plat, easement, declaration of further covenants, conditions, restrictions or easements or other instrument which is to be Recorded and which is required by this Section 3.23 to be approved by the Design Review Committee shall be effective unless the required approval is evidenced on such instrument by the signature of an authorized representative of the Design Review Committee.

3.23.5 No site plan, subdivision plat, or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be submitted to the City unless the same has first been approved in writing by the Design Review Committee as provided in this Section 3.23; further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by the Design Review Committee hereunder unless such changes or modifications have first been approved by the Design Review Committee in writing.

3.23.6 Notwithstanding the foregoing, neither the Declarant nor any Declarant Affiliate shall be required to seek or obtain any of the approvals or consents otherwise required under this Section 3.23 as to any Lot, or any portion of either, of which the Declarant or any Declarant Affiliate is the Owner.

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3.24 Vehicles. In general, all Vehicles (as defined below) must be parked, kept, maintained, stored, constructed, reconstructed or repaired only within a fully-enclosed garage approved by the Design Review Committee pursuant to Section 3.3, or in other areas on a Lot approved in writing by the Design Review Committee (which approval may be conditioned upon the planting or construction of landscaping or other screening approved by the Design Review Committee). For purposes of this Section, the term "Vehicles" includes cars, trucks and vans of all sizes, motorcycles, motorbikes, mopeds, mini-bikes, motor scooters, all-terrain vehicles, off-road vehicles, motorhomes, recreational vehicles, trailers, travel trailers, tent trailers, camper shells, detached campers, boats, boat trailers, mobile homes, or other similar machinery or equipment, whether motorized or not, whether wheeled or not and whether or not in operating condition. Notwithstanding the foregoing: (a) up to one car, van or truck having a capacity of one ton or less may occasionally be parked on driveways or other improved parking areas on a

Lot so long as the same are in operating condition and are regularly used for transportation of passengers; (b) additional cars, vans or trucks having a capacity of one ton or less may be parked from time to time on driveways or other improved parking areas on a Lot to accommodate visitors or guests of the Owner or Occupant of that Lot (provided that the Design Review Committee may adopt rules or regulations relating to the number or frequency of guest or visitor vehicle parking, if it determines, in its discretion, that such rules or regulations are necessary); (c) service, repair or delivery vehicles may be parked on a Lot, but only for the period reasonably required to effect the needed service, repair or delivery; and (d) a temporary construction trailer may be placed and maintained on a Lot in connection with construction of Improvements on that Lot, but only if that temporary construction trailer, its location on the Lot and the period during which it will be permitted to remain on the Lot are approved in writing by the Design Review Committee. Except for emergency repairs, no Vehicle shall be repaired, constructed or reconstructed on the Property except within a fully-enclosed garage. No Vehicle shall be parked on any roadway or street within or adjacent to the Property, except for temporary parking (not exceeding 24 hours) of Vehicles of an Owner's or Occupant's guests.

3.25 Towing of Vehicles. The Board has the right, without notice, to have any Vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Governing Documents towed away at the sole cost and expense of the owner of the Vehicle. Any expense incurred by the Association in connection with the towing of any Vehicle must be paid to the Association upon demand by the owner of the Vehicle. If the Vehicle is owned by an Owner or Occupant, any amounts payable to the Association will be secured by the Assessment Lien against that Owner's or Occupant's Lot, and the Association may enforce collection of those amounts in the same manner provided for in this Declaration for the collection of Assessments.

3.26 Snow Removal. Each Owner shall be responsible for removal of snow from the driveway and sidewalks on such Owner's Lot. If an Owner elects to hire a contractor to perform some or all of such Owner's snow removal duties under this Section, the Board may require that such Owner use the contractor then used by the Association for snow removal, so as to reduce the number of snow removal vehicles within the Project and thereby promote coordination and safety within the Project.

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3.27 Variances. The Design Review Committee (or the Board if the Design Review Committee ceases to exist) may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this ARTICLE 3 if the Design Review Committee determines in its discretion that: (a) a restriction would create an unreasonable hardship or burden on an Owner or Occupant or a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete; and (b) the activity permitted under the variance will not have any substantial adverse effect on Owners and Occupants and is consistent with the high quality of life intended for residents of the Project.

3.28 Change of Use of Common Area. Upon: (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners; and (b) the approval of such resolution by Association Members casting more than fifty percent (50%) of the votes entitled to

be cast by Association Members who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such Common Area under the terms of this Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be consistent with any zoning regulations restricting or limiting the use of the Common Area. This Section 3.28 shall not apply to, or be deemed to limit in any way, the right and power of the Association pursuant to ARTICLE 4 to grant easements over, under or through portions of the Common Area, or to dedicate portions of the Common Area, to public, quasi-public or private utility companies, municipalities or other governmental agencies or entities, in connection with or at the time of development of property within or adjacent to the Project, where required or requested by any municipality or other governmental agency or entity, or any public, quasi-public or private utility company.

3.29 Drainage. No Dwelling, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

3.30 Garages and Driveways. The interior of all garages shall be maintained in a neat, clean and sightly condition. Garages shall be used only for parking vehicles and storage, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons.

3.31 Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or appurtenant equipment may be mounted, installed or maintained on the roof of any Dwelling or other building so as to be Visible From Neighboring Property.

3.32 Basketball Goals or Play Structures. No basketball goal, backboard or similar structure or device, and no swingsets or other play structures, shall be placed or constructed on any Lot without the prior written approval of the Design Review Committee (including, without limitation, approval as to appearance and location).

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3.33 Tanks. No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on or beneath any Lot. Nothing herein shall be deemed to prohibit use or storage upon any Lot of an aboveground propane or similar fuel tank with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace or a spa or "hot tub," so long as any such tank either: (a) has a capacity of ten (10) gallons or less; or (b) is appropriately stored, used and/or screened, in accordance with the Design Review Guideline's or as otherwise approved by the Design Review Committee, so as not to be Visible From Neighboring Property.

3.34 Exterior Lighting. Exterior lighting shall be permitted on a Lot in accordance with the Design Review Guidelines.

3.35 Lots and Improvements. Declarant shall not be restricted in the location of Lots, Dwellings, Common Area or other Improvements on the Property or in the number of Lots, Dwellings or Improvements that may be created on the Property, except as may be required by the Governing Documents, applicable zoning requirements, ordinances or regulations. The Lots, Dwellings and Improvements to be located on the Property shall be subject to the use restrictions contained in the Governing Documents. No structures other than Dwellings will be erected on the Property, provided, however, that Declarant reserves the right to create additional Common Area and Improvements on the Property, including, without limitation, the right to create condominium projects on one or more Lots, pursuant to the Utah Condominium Ownership Act. Declarant makes no assurances as to location, size, type or number of Lots, Dwellings, Common Area or other Improvements to be created on the Property.

3.36 Declarant's Exemption. No Design Review Committee approval shall be required for (i) any construction, installation, addition, alteration, repair, change, replacement of Improvements, landscaping, signs or other work deemed necessary or convenient by the Declarant; (ii) initial Dwellings and Improvements constructed by, at the direction of, or with the express written approval of Declarant; (iii) normal maintenance of Exempt Property or previously approved Dwellings or Improvements; (iv) rebuilding an Exempt Property or previously approved Dwelling or Improvement in accordance with its original design and dimensions; (v) changes to the interior of an Exempt Property or previously approved Dwelling or Improvement; (vi) work reasonably required to be performed in an emergency for the purpose of protecting any person or property from damage.

**ARTICLE 4**

**EASEMENTS**

**4.1 Owners' Easements of Enjoyment.**

4.1.1 Common Area Easements. Subject to the rights and easements granted to Declarant in Section 4.5, each Owner and Occupant shall have a non-exclusive right and easement of enjoyment in, to and over the Common Area, which right and easement shall be appurtenant to and shall pass with the title to each Lot, Dwelling and Improvement, subject to the provisions of the Governing Documents including, without limitation, the following:

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4.1.1.1 Except as otherwise provided in this Declaration, no dedication, transfer, mortgage or encumbrance of all or any portion of the Common Area shall be effective unless approved by Owners representing two-thirds (2/3) of the votes in each class of Members. Notwithstanding the preceding sentence or any other provision of this Declaration to the contrary, the Association shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant owns any part of the Property), to dedicate portions of the Common Area to the public, or grant easements over, under or through portions of the Common Area to the public, to any municipal or other governmental agency or entity, or to any



public, quasi-public or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or requested by the City, or by a public, quasi-public or private utility company, in connection with or at the time of the development of portions of the Property.

4.1.1.2 The Association shall have the right to regulate the use of the Common Area through the Project Rules and to prohibit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or other Occupants.

4.1.1.3 Declarant and the Association shall each have the right to grant easements or licenses to Developers or other Persons for the construction of Improvements on the Common Area, and Declarant and the Association shall each have the right to grant ingress and egress easements over the streets and roads in the Project to Persons who are not Members of the Association.

4.1.2 Readjustment of Lot Line Boundaries. Declarant hereby reserves for itself, its successors and assigns, the right to realign and adjust lot lines for purposes of proper configuration and final engineering of the Project. The authority to readjust such lot lines shall be solely and exclusively reserved to Declarant, or its successors or assigns, in its sole subjective discretion. All Developers and Owners specifically acknowledge and agree that they shall adjust the lot lines by deed in form and content as requested by Declarant for the purposes of properly configuring the Lots. The City, Developers and all Owners agree that any such Lot line adjustments may be accomplished by Recording a deed by the respective Owners adjusting lot lines, and that no amendment to this Declaration or the Plat shall be required so long as such Lot line adjustments are made pursuant to Utah Code Annotated § 17-27-808(7), as amended. More particularly, lot line adjustments between adjacent Lots may be executed upon the Recordation of an appropriate deed if:

4.1.2.1 no new Lot or Dwelling results from the Lot line adjustment;

4.1.2.2 the adjoining property Owners consent to the Lot line adjustment (such consent to be granted by Owners as described above);

4.1.2.3 the Lot line adjustment does not result in remnant land that did not previously exist; and

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4.1.2.4 the adjustment does not result in violation of the City's zoning requirements.

The foregoing Sections 4.1.2.1, 4.1.2.2, 4.1.2.3 and 4.1.2.4 are subject to automatic modification to be consistent with any amendments or changes to Utah Code Annotated § 17-27-808(7).

4.2 Lessee Access Rights. If a Dwelling or Improvement is leased or rented by its Owner, the Occupants of such Dwelling or Improvement shall have the right to use the Common

Area during the term of the lease, and the Owner of such Dwelling shall have no right to use the Common Area until the termination or expiration of such lease.

4.3 Utility Easement. There is hereby created an easement upon, across, over and under the Common Area, Lots and other property for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment on the Common Area, Lots, and other property but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Common Area, Lots, and other property except as initially designed, approved and/or constructed by Declarant or as approved by the Board (and, in the case of a Dwelling or Improvement, by the Owner of such Dwelling or Improvement). If any utility company requests that a more specific easement be granted in its favor in substitution for the blanket easement hereby established with respect to the Common Area, the Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate.

4.4 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such private streets, driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots, Dwellings or Improvements and their guests, families, lessees, tenants and invitees. There is also hereby created an easement upon, across and over the Common Area and all private streets, private roadways, private driveways and private parking areas within the Project for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all such easements from time to time as it sees fit without the consent of any Owners (but subject to any necessary approvals of the City including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

4.5 Declarant's Use and Easements.

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4.5.1 Declarant shall have the right and an easement (which, in its discretion, it may delegate to and/or share with one or more Developers, upon and subject to such terms and conditions as Declarant may deem appropriate) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Property with respect to the sale of Lots, Dwellings, Improvements or other property in the Project. Declarant reserves the right (which, in its discretion, it may delegate to and/or share with one or more Developers, upon and subject to such terms and conditions as Declarant may deem appropriate) to place models, management offices and sales and leasing offices on any Lots or other property owned by

Declarant (or by such Developer(s), as applicable) and on any portion of the Project in such number, of such size and in such locations as Declarant deems appropriate.

4.5.2 So long as Declarant is marketing Lots, Dwellings or other portions of the Property, Declarant shall have the right to restrict the use of the parking spaces on the Common Area. Such right shall include reserving such spaces for use by prospective Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

4.5.3 Declarant shall have the right and an easement on and over the Common Area to construct all Improvements Declarant may deem necessary and to use the Common Area and any Lots and other property owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

4.5.4 Declarant shall have the right and an easement upon, over and through the Common Area as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by Declarant in this Declaration.

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

4.6.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

4.6.2 For inspection, maintenance, repair and replacement of portions of the Common Area accessible only from such Lots or Dwellings;

4.6.3 For correction of emergency conditions on one or more Lots, Dwellings or Improvements on portions of the Common Area accessible only from such Lots, Dwellings or Improvements;

4.6.4 For the purpose of enabling the Association, the Board, the Design Review Committee or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Governing Documents;

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4.6.5 For inspection during reasonable hours of the Lots, Dwellings and Improvements in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

4.6.6 For maintaining the Cottage Lots pursuant to Section 2.7.

**ARTICLE 5**

**THE ASSOCIATION; ORGANIZATION;  
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

5.1 Formation of Association. The Association shall be a nonprofit Utah corporation charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents. In the event of any conflict or inconsistency between this Declaration and the other Governing Documents, this Declaration shall control. Thereafter, priority shall be given to the Governing Documents in the following order: Articles, Bylaws and Project Rules.

5.2 Governing Board and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Governing Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area; the Board shall determine the compensation to be paid to any such manager.

5.3 Project Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Common Area including, but not limited to, any recreational facilities or other Improvements situated upon the Common Area; (b) traffic and parking restrictions including speed limits on private streets within the Project; (c) minimum standards for any maintenance of Common Area, Lots, Dwellings and Improvements within the Project; or (d) any other subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Project Rules, the provisions of this Declaration shall prevail.

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5.4 Personal Liability. No member of the Board or any other committee of the Association, no officer of the Association and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board or any member thereof, the manager, any representative or employee of the Association, any officer of the Association or any member of any other committee of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has engaged in intentional misconduct.

5.5 Implied Rights. The Association may exercise any expressed or implied right or privilege given to the Association expressly by the Governing Documents or any other right or privilege reasonably necessary to effectuate any such right or privilege.

5.6 Membership in the Association. Every Owner of a Lot or Dwelling which is Assessable Property shall be a Member of the Association and Declarant shall be a Member of

the Association so long as it owns any part of the Project (unless and until Declarant expressly relinquishes in writing its status as a Member of the Association).

5.7 Votes in the Association.

5.7.1 The Association shall have two (2) classes of memberships which shall be entitled to the following voting rights:

5.7.1.1 Class A. All Owners of Lots or Dwellings, with the exception of Declarant, shall be Class A Members and shall be entitled to one (1) vote for each Lot or Dwelling owned or represented.

5.7.1.2 Class B. Declarant shall be a Class B Member and shall be entitled to three (3) votes for each Lot or Dwelling owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or

(ii) Thirty (30) years from the date this Declaration is Recorded.

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5.8 Voting Procedures. A change in the ownership of a Dwelling shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded; the Board shall thereafter be given written notice of such change and provided satisfactory evidence thereof. The vote for each Lot and Dwelling must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot or Dwelling is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot or Dwelling, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot or Dwelling unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote or votes for a particular Lot or Dwelling, the vote or votes for that Lot or Dwelling shall be deemed void and shall not be counted.

5.9 Transfer of Association Membership. The rights and obligations of any Member other than Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot or Dwelling, and then only to the transferee of ownership of the Lot or Dwelling. A transfer of ownership of a Lot or Dwelling may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot or Dwelling shall operate to transfer the membership in the Association appurtenant to said Lot or Dwelling to the new Owner thereof. Each Purchaser shall notify the Association of his, her or its purchase of a Lot or Dwelling. The Association may require the

Purchaser of a Lot or Dwelling to pay to the Association a transfer fee in an amount to be set by the Board, and the transfer fee shall be secured by the Assessment Lien.

**ARTICLE 6**

**DESIGN REVIEW COMMITTEE**

6.1 Purpose. Prior to any review or approval by the City, the Design Review Committee shall be the first to review, study and either approve, reject or request resubmittal of proposed developments and improvements to a Lot, Dwelling or Improvement, all in compliance with this Declaration and as further set forth in the rules and regulations of the Design Review Committee and the Design Guidelines. Each Developer shall demonstrate to the Design Review Committee that its plat and land use plan have been approved by Declarant and that such items are in compliance with the Design Guidelines.

6.2 Membership. The Design Review Committee shall be composed of individuals or entities as the Declarant may determine in its sole and exclusive discretion, who need not be Owners. So long as the Declarant owns any Lot, Dwelling or other property within the Project, the Design Review Committee shall consist of three (3) regular members and one (1) alternate member, each of whom shall be appointed, removed and replaced by, and serve at the pleasure of, Declarant in its sole and exclusive discretion. At such time as Declarant no longer owns any Lot, Dwelling or other property within the Project, the Design Review Committee shall consist of such number of regular and alternate members as the Board may deem appropriate from time to time (but in no event less than three (3) nor more than seven (7) regular members, nor less than one (1) nor more than three (3) alternate members), each of whom shall be appointed by, and serve at the pleasure of, the Board. Declarant may at any time voluntarily surrender in writing its right, as Declarant, to appoint and remove the members of the Design Review Committee pursuant to this Section, and in that event Declarant may require, for so long as Declarant owns any Lot, Dwelling or other property within the Project, that specified actions of the Design Review Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

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6.3 Organization and Operation of the Design Review Committee.

6.3.1 Term. The term of office of each member of the Design Review Committee shall be three (3) years, commencing January 1 of each year, and continuing until his or her successor is appointed, which terms shall be staggered as determined by the Board. Should a Design Review Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 6.2 above. The Declarant may remove any member of the Design Review Committee at any time for any cause without notice.

6.3.2 Chairperson. So long as Declarant's membership in the Association exists, Declarant shall appoint the chairperson of the Design Review Committee. Thereafter, the Board shall appoint the Design Review Committee and the chairperson

shall be elected annually from among the members of the Design Review Committee by majority vote of said members.

6.3.3 Operations. The chairperson shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Design Review Committee prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member. In the absence of a chairperson, the party responsible for appointing or electing the chairperson may appoint or elect a successor, or if the absence is temporary, a temporary successor.

6.3.4 Voting. The affirmative vote of a majority of the members of the Design Review Committee shall govern its actions and be the act of the Design Review Committee. A quorum shall consist of a majority of the members.

6.3.5 Expert Consultation. The Design Review Committee may avail itself of technical and professional advice and consultants as it deems appropriate.

6.3.6 Powers. The Design Review Committee shall always be subordinate to and shall not do anything in contradiction to this Declaration or the Design Guidelines.

6.4 Expenses. All expenses of the Design Review Committee shall be paid by the Association, subject to Declarant's or the Association's right to charge a reasonable design review fee to defray such expenses as provided for in Section 3.3.9 above.

6.5 Design Guidelines and Rules. The Design Review Committee shall adopt, establish, and publish from time to time the Design Guidelines. The Design Guidelines shall define and describe the design standards for the Project and the various uses within the Project. The Design Guidelines may be modified or amended from time to time by the Design Review Committee. The Design Review Committee, in its sole discretion, may excuse compliance with such Design Guidelines as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to obtaining final approval of any Lots, Dwellings or Improvements from the Design Review Committee and prior to commencing construction. The Design Guidelines shall not be subject to modification or amendment by the Members. The Design Guidelines shall be established solely by the Design Review Committee and Declarant.

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6.6 Procedures. As part of the Design Guidelines, the Design Review Committee shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings. Appeals shall be conducted as provided in the Bylaws.

6.7 Limitation of Liability. The Design Review Committee shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it. Neither the Design Review Committee, nor any individual Design Review Committee member, shall be liable to any person for any official act of the Design Review Committee in connection with submitted plans and specifications, except to the extent the Design Review Committee or any individual Design Review Committee member acted with malice. Approval by the Design

Review Committee does not necessarily assure approval by the City. Notwithstanding that the Design Review Committee has approved plans and specifications, neither the Design Review Committee nor any of its members shall be responsible or liable to any Owner, Developer or other contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of any Dwelling or Improvement. Neither the Board, the Design Review Committee, or any agent thereof, nor Declarant, Declarant Affiliate, or any of Declarant's members, employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Governing Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Design Review Committee shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Design Review Committee's decision. The Association, however, shall not be obligated to indemnify any member of the Design Review Committee to the extent any such member of the Design Review Committee shall be adjudged to be liable for gross negligence or willful misconduct in the performance of his or her duty as a member of the Design Review Committee, unless and then only to the extent that the court in which such action or suit may be brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

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**ARTICLE 7**

**COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

7.1 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot and Dwelling, hereby covenants and agrees, and each Owner, other than Declarant, by becoming the Owner of a Lot or Dwelling, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot or Dwelling and shall be a continuing lien upon the Lot or Dwelling against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of each Person who was an Owner of the Lot or Dwelling at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessment or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title), but the lien created by this Declaration against the applicable Lot or Dwelling shall continue to secure payment of such delinquent Assessment (including, but not limited to, any and all interests and late charges) until the same are fully paid.

7.2 Annual Assessment. In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to



perform its duties and obligations under the Governing Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board, for each fiscal year shall assess an Annual Assessment against each Lot and Dwelling which is Assessable Property. Annual Assessments shall be computed and assessed against all Lots and Dwellings in the Project as follows:

7.2.1 Common Expense. Annual Assessments shall be based upon advance estimates of the Association’s cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Area, and furnishing common utility services and other common items to the Dwellings. Such estimated expenses may include, without limitation, the following: road maintenance and repair; snow removal; management expenses; real property taxes and Special Assessments (unless and until the Dwellings are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Association employees, including fees for a manager; utility charges, including charges for utility services to the Dwellings to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expenses, and all funds received from assessments under this Section shall be part of the common expense fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the common expense fund.

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7.2.2 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31. The first fiscal year shall begin on the date of this Declaration and end on December 31 of the same year. The Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating fiscal year. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal year.

7.2.3 Notice and Payment. Beginning with the 2006 fiscal year, the Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year, but the failure to give prior notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that fiscal year are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for

that fiscal year and the revised Annual Assessment shall commence on the date designated by the Board.

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7.3 Cottage Maintenance Assessment. In order for the for the Association to perform its duty to maintain the Cottage Lots pursuant to Section 2.7, the Board, for each fiscal year shall assess a Cottage Maintenance Assessment against each Cottage Lot which is Assessable Property. Each Owner of a Cottage Lot shall pay this Cottage Maintenance Assessment in addition to the Annual Assessment. All funds obtained from Cottage Maintenance Assessments shall only be used for Cottage Lot maintenance and reserves, and such funds shall be kept separate and apart from funds collected for Common Expenses.

7.4 Exempt Property Assessments. Declarant or a Declarant Affiliate may expressly waive its right to an exemption from Assessments as to some or all Exempt Properties of which it is then the Owner, by Recording an amendment to this Declaration identifying such Exempt Properties and signed by it and all Mortgagees of such Exempt Properties. In such event, Declarant's exemption shall terminate as to each identified Exempt Property when such an amendment to this Declaration is Recorded. Any such waiver shall run with the title to each such Exempt Property and bind its subsequent Owners, including Declarant or any Declarant Affiliate. All Exempt Property described herein shall be exempt from the Assessments and Membership in the Association (provided, however, Declarant shall remain a Class B Member in the Association at all times so long as it owns a Lot or Dwelling within the Project, notwithstanding its temporary exemption status from required Assessment payments) and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of the Design Guidelines and this Declaration, including but not limited to, the use restrictions and architectural controls thereof. Anything in this Section to the contrary notwithstanding, if, after an Assessment's record date but before the end of the fiscal year for which it is levied, an Exempt Property becomes Assessable Property, then each Assessment which would have been levied against such Assessable Property for such fiscal year if it were not Exempt Property (as hereafter reduced) shall be due on the later of (a) the date on which such Assessment would have been due, if such part of the Project had been Assessable Property on such record date, or (b) the date on which such Assessable Property becomes subject to Assessment levy. If an Assessable Property is added to the Project as provided for above, then the Association shall be deemed, automatically and without the need for further action, to have levied against it each Assessment for such fiscal year which Association has levied against the other Assessable Properties. Each such Assessment levied against such Assessable Property shall be in an amount determined under this Section as if it were eligible for such levy on such record date, but then reduced in proportion to the number of days (if any) in such fiscal year elapsed as of (and including) the date on which such Exempt Property becomes an Assessable Property.

7.5 Special Assessments. The Association may levy against each Lot and Dwelling which is Assessable Property, in any fiscal year, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Improvements upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of the majority of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

**7.6 Uniform Rate of Assessment.** The amount of any Annual or Special Assessment against each Lot shall be fixed at a uniform rate per membership, except that the Owner of a Lot shall pay only twenty-five percent (25%) of the Annual Assessment attributable to his, her or its membership until completion of the first Dwelling on the Lot and occupancy of such Dwelling. If the Owner of a Lot ceases to qualify for the reduced twenty-five (25%) rate during the period to which an Annual Assessment is attributable, the Assessment attributable to the membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual Assessments may be collected on a monthly or other basis and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment. So long as Declarant qualifies for the reduced assessment rate with respect to the Lot which it owns, if the Assessments for any fiscal year of the Association shall fail to equal or exceed the actual expenses incurred by the Association during any such fiscal year because of Declarant's right to pay reduced Assessments, then Declarant shall pay to the Association a sufficient amount, up to the amount for that fiscal year of the full Assessment for each Lot owned by Declarant to meet any such deficit, so long as a written notice of such deficit is given by the Association to Declarant within sixty (60) days following the termination of the fiscal year for which the Assessment is made.

**7.7 Rules Regarding Billing and Collection Procedures.** The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his, her or its liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot or Dwelling changes during a fiscal year; successor Owners of Dwellings shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**7.8 Effect of Nonpayment of Assessments; Remedies of the Association.**

7.8.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate established from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within thirty (30) days after such payment was due.

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7.8.2 The Association shall have a lien on each Lot and Dwelling for all Assessments levied against the Lot or Dwelling and for all other fees and charges payable to the Association by the Owner of the Lot or Dwelling pursuant to this Declaration. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, Record a notice of lien setting forth the name of

the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot or Dwelling against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, lien recording fees and reasonable attorneys' fees.

7.8.3 The Assessment Lien shall have priority over all liens or claims except for (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental body or assessment district; and (c) the lien of any First Mortgage.

7.8.4 The Association shall not be obligated to release any Recorded notice of lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot or Dwelling have been paid in full.

7.8.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to: (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments; or (b) enforce the Assessment Lien against the applicable Lot or Dwelling by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner of the Lot or Dwelling being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots and Dwellings purchased at such sale.

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7.8.6 The Association shall have the right to suspend the rights of any Owner or Occupant to use and enjoy the Common Area: (1) for any period during which an Assessment remains delinquent; (2) for a period not to exceed sixty (60) days for any infraction of the Governing Documents; or (3) for successive 60-day periods if any such infraction is not corrected during any preceding suspension period.

7.9 Evidence of Payment of Assessments. Upon receipt of a written request by any Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating: (a) that all Assessments, interest and other fees and charges have been paid with respect to any specified Lot or Dwelling as of the date of such certificate; or (b) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot or Dwelling in question.

7.10 Purposes for Which Association's Funds May be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Occupants by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all roads, land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance and repair of roads within the Project, social interaction among Members and Occupants, maintenance of landscaping on Common Area and public right-of-way and drainage areas within the Project, construction, operation and maintenance of recreational and other facilities on Common Area, recreation, insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers, directors and committee members of the Association, employment of professional managers, and hiring professional consultants such as architects, engineers, attorneys and accountants.

7.11 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

7.12 Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments. Notwithstanding any other provision hereof or of the Articles, Bylaws or Project Rules, written notice of any meeting called for the purpose of: (a) approving the establishment of any Special Assessment shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment, a quorum shall consist of fifty percent (50%) of the votes in each class of Members (whether represented in person or by valid proxy), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (½) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

Ent 903772 Bk 1380 Pg 1491

**ARTICLE 8**

**MAINTENANCE**

**8.1 Common Area and Public Right of Way.**

8.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Common Area and all Improvements located thereon (subject to Section 8.1.3), except the Association shall not be obligated to maintain areas which the City or any utility company is maintaining or is obligated to maintain.

8.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Common Area and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

8.1.3 In the event any subdivision plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots or Dwellings will be responsible for maintenance of certain Common Area or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract to provide maintenance service to Owners of Lots and Dwellings having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

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8.2 Installation of Landscaping. The Owner of a Lot shall install (if not already installed) grass, trees, plants and other landscaping improvements (together with an irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements), on all portions of the Lot not fully enclosed by a solid fence or wall at least six (6) feet high, not later than the last day of September next occurring after the date on which a certificate of occupancy is issued with respect to a Lot or Dwelling on that Lot. All landscaping must be installed in accordance with plans approved in writing by the Design Review Committee. If landscaping and an irrigation system are not installed on a Lot in the manner and by the applicable date provided for in this Section, the Association shall have the right, but not the obligation, to enter upon such Lot to install such landscaping improvements as the Association deems appropriate (together with an irrigation system sufficient to adequately water the same), and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

8.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of the Common Area or any other area maintained by the Association

is caused through the willful or negligent act of any Member, his family, Lessee, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Association Member's Lot or Dwelling is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot or Dwelling pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

8.4 Improper Maintenance and Use of Lots and Parcels. In the event any portion of any Lot or Dwelling is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots and Parcels or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Dwelling is being used in a manner which violates the Governing Documents, or in the event the Owner of any Lot or Dwelling is failing to perform any of its obligations under the Governing Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is take within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such corrective action as it deems appropriate to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot or Dwelling is subject and shall be secured by the Assessment Lien.

**ARTICLE 9**

**INSURANCE**

9.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Dwelling to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

**Ent 903772 Bk 1380 Pg 1493**

9.1.1 Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

9.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

9.1.3 Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

9.1.4 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

9.1.5 Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

9.1.5.1 The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

9.1.5.2 No act or omission by any Owner will void the policy or adversely affect recovery on the policy;

9.1.5.3 The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

9.1.5.4 A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Association or other Owners or Occupants;

9.1.5.5 Statement naming the Association as the insured;

9.1.5.6 For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

9.2 Certificates of Insurance. An insurer which has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner or Mortgagee. Any insurance obtained pursuant to this Article shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

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9.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Declaration shall be included in the budget of the Association and shall be paid by the Association.

9.4 Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association, the loss shall be adjusted with the Board, and the insurance proceeds shall be payable to the Association and not to any Mortgagee. Subject to the provisions of Section 9.5, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.



9.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (i) be retained by the Association as an additional capital reserve; (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association; or (iii) shall be distributed in equal shares per Association Memberships to the Owners of each Lot or Dwelling as their interests appear.

**ARTICLE 10**

**TERM, TERMINATION AND AMENDMENT**

10.1 Term; Method of Termination. This Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting eighty percent (80%) of the total votes of the Association cast at an election held for such purpose or otherwise approved in writing within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. This Declaration may be terminated at any time if eighty percent (80%) of the votes of the Members shall be cast in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a certificate of termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

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10.2 Amendments. This Declaration may be amended by Recording a certificate of amendment, duly signed and acknowledged by and on behalf of the Association ("Certificate of Amendment"). The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Sections 10.3 and 10.4 or elsewhere in this Declaration, shall certify that at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws or by separate written ballot without a meeting, the Members casting at least sixty seven percent (67%) of the total votes of the Association at the election voted affirmatively for the adoption of the amendment. So long as Declarant is the Owner of any Lot or Dwelling in the Project, this Declaration may be amended or terminated only with the written approval of Declarant.

10.3 Unilateral Amendments. Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Lot or Dwelling. Notwithstanding anything

contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots and Dwellings subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing. Further, so long as Declarant's Class B Membership in the Association exists, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

10.4 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s), Dwelling(s), or any portions thereof. Any such amendment shall be effected by the Recordation by Declarant of a Certificate of Amendment duly signed by or on behalf of the shareholders, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

**ARTICLE 11**

**GENERAL PROVISIONS**

11.1 Enforcement. The Association or any Owner shall have the right to enforce the Governing Documents.

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11.2 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction

or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by this Declaration.

11.3 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

11.4 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

11.5 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

11.6 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt, as part of the Project Rules, additional rules and regulations with respect to any other aspects of the Association's rights, activities and duties, provided said additional rules and regulations are not inconsistent with the provisions of the other Governing Documents.

11.7 Laws, Ordinances and Regulations.

11.7.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Design Review Committee with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations.

11.7.2 Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be in violation of this Declaration and subject to any or all of the enforcement proceedings set forth herein.

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11.8 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or Dwelling or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

11.9 Gender and Number. Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

11.10 Captions and Title; Section References; Exhibits. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

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11.11 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, the Governing Documents or resolution of the Board to be given to any Owner, Lessee or Occupant then, unless otherwise specified in the Governing Documents or in the resolution of the Board, or unless otherwise required by law, such notice requirement shall be deemed satisfied if notice of such action, proposed action or meeting is: (a) sent by United States mail to the last known mailing address of the Owner, Lessee or Occupant (as applicable), as shown in the records of the Association; or (b) if no such mailing address is reflected on the records of the Association, then sent by United States mail to the mailing address of the Lot (as applicable) if, at the time, there is a Dwelling situated thereon; or (c) if there is no such mailing address reflected in the records of the Association and there is then no Dwelling situated on the applicable Lot, then sent or given in whatever reasonable manner the Board may elect, which may include, without limitation, publishing the same in any newspaper in general circulation within Cache County, Utah. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other reasonable and appropriate manner.

11.12 Indemnification. The Association shall indemnify each and every trustee and officer of the Association, each and every member of the Design Review Committee, and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Association, former members of the Design Review Committee, and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, unless the liability for such expenses arises out of his or her own intentional misconduct. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Member of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right

to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section or otherwise under the Articles, Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

11.13 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Area or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Dwelling (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area, which shall be subject to Article 4) which may or may not be subject to this Declaration.

Ent 903772 Bk 1380 Pg 1499

11.14 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

11.15 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of the Governing Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot or Dwelling against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot or Dwelling, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot or Dwelling against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did

not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

11.16 Disclaimer of Representations. Notwithstanding anything to the contrary herein, neither Declarant nor any Declarant Affiliate makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that any real property now owned or hereafter acquired by Declarant or by any Declarant Affiliate is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While neither Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Declaration is or may be invalid or unenforceable for any reason or to any extent, neither Declarant nor any Declarant Affiliate makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Dwelling in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Dwelling agrees to hold Declarant and all Declarant Affiliates harmless therefrom.

11.17 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as Declarant, any Declarant Affiliate or a trustee for the benefit of Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of Declarant.

11.18 Bulk Service Agreements.

Ent 903772 Bk 1380 Pg 1500

11.18.1 The Board, acting on behalf of the Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots, Dwellings or both within the Property, or within one or more portions thereof, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or any concierge or other personal services: (a) which might not otherwise be generally available to such Owners and Occupants; (b) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally; or (d) any combination of the foregoing.

11.18.2 If all Lots and Dwellings within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such Bulk Service Agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly) (provided that such "separate billing" may be made as one or more separate line items on billings or invoices from the Association to the affected Owner(s) for Assessments or other charges). If not all Lots and Dwellings within the Property will be served by a particular Bulk Service Agreement the Board shall have only the billing option described in clause (b) above.

11.18.3 Declarant, for each Lot and Dwelling, hereby covenants and agrees, and each Owner other than Declarant, by becoming the Owner of a Lot or Dwelling, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot or Dwelling) by the Board pursuant to this Section and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots or Dwellings against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot or Dwelling at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

11.18.4 No Owner of a Lot or Dwelling covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot or Dwelling under this Section, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot upon which no Dwelling or other Improvement has been completed.

Ent 903772 Bk 1380 Pg 1501

11.18.5 "Bulk Provider" means a private, public or quasi-public utility or other company which provides, or proposes to provide, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Occupants, Dwellings within the Property, Lots or within one or more portions thereof, pursuant to a "Bulk Service Agreement" (as defined below).

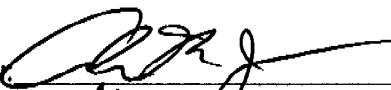
11.18.6 "Bulk Service Agreement" means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Occupants, Dwellings with the Property, Lots or within one or more portions thereof.

11.18.7 During the Period of Declarant Control, the Board shall not, without the approval of Members holding at least fifty-one percent (51%) of all Class A votes represented in person or by proxy at an annual or special meeting of the Members of the Association, enter into a Bulk Service Agreement which imposes on the Association or its Members (other than Declarant or a Developer which, in either case, agrees in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any cable television, community satellite television, high speed Internet, security monitoring or electronic entertainment, information, communication or security services, but nothing in this Section shall prevent the Board from entering into, or require approval by the Members of, any Bulk Service Agreement which imposes on the Association or its Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Cache County, Utah, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

Ent 903772 Bk 1380 Pg 1502

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

SOLARE LAND HOLDINGS, LLC,  
a Utah limited liability company

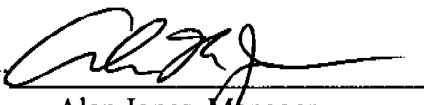
By:   
Name: Alan K. Jones  
Its: Manager

CONSENT AND SUBMISSION OF AFFILIATE:

The undersigned, being an affiliate of Declarant and the record title owner of that portion of the Property described as "Parcel 2" on attached Exhibit "A", hereby consents to the recordation of this Declaration, submits said Parcel 2 to the terms and conditions of this Declaration, and agrees to be bound by all of the terms and provisions hereof so long as it owns any portion of the Property. Upon request of the Declarant, the undersigned shall transfer all of its right, title and interest in and to the Property to the Association.



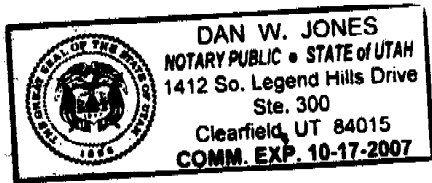
DEER CREST COMMUNITIES OF LOGAN  
HOMEOWNERS' ASSOCIATION, LLC,  
a Utah limited liability company

By   
Alan Jones, Manager

Ent 903772 Bk 1380 Pg 1503

STATE OF UTAH )  
 ) ss.  
COUNTY OF DAVIS )

The foregoing instrument was acknowledged before me this 3 day of November, 2005, by Alan K. Jones as manager of Solare Land Holdings, LLC, a Utah limited liability company.



[Signature]  
Notary Public

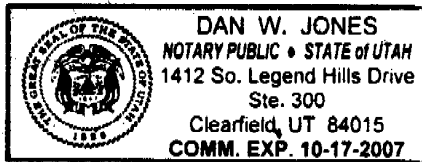
My Commission Expires:

\_\_\_\_\_

Ent 903772 Bk 1380 Pg 1504

STATE OF UTAH )  
 ) ss.  
COUNTY OF DAVIS )

The foregoing instrument was acknowledged before me this 3 day of November, 2005, by Alan K. Jones as manager of Deer Crest Communities of Logan Homeowners' Association, LLC, a Utah limited liability company.



[Signature]  
Notary Public

My Commission Expires:

\_\_\_\_\_

**Exhibit "A"**

**LEGAL DESCRIPTION OF PROJECT**

Parcel 1:

LOTS 1 THROUGH 94 INCLUSIVE, THE COMMUNITIES AT DEER CREST, A PLANNED UNIT DEVELOPMENT, AS SHOWN BY THE OFFICIAL PLAT THEREOF, RECORDED NOVEMBER 1, 2005, AS FILING NO. 903427, IN THE OFFICE OF THE RECORDER OF CACHE COUNTY, UTAH.

TOGETHER WITH:

Parcel 2:

TRACTS A AND B, AND ALL LANES AND COURTS OF THE COMMUNITIES AT DEER CREST, A PLANNED UNIT DEVELOPMENT, AS SHOWN BY THE OFFICIAL PLAT THEREOF, RECORDED NOVEMBER 1, 2005, AS FILING NO. 903427, IN THE OFFICE OF THE RECORDER OF CACHE COUNTY, UTAH

**Ent 903772 Bk 1380 Pg 1505**