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**NEIGHBORHOOD DECLARATION FOR  
THE LEDGES OF ST. GEORGE  
POCKET MESA**

**A residential subdivision located in**

**LEDGES EAST**

**a master planned community**

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**NEIGHBORHOOD DECLARATION FOR  
POCKET MESA AT LEDGES EAST**

THIS IS A NEIGHBORHOOD DECLARATION of Covenants, Conditions and Restrictions which establishes a planned development known as Pocket Mesa at Ledges East.

**RECITALS**

A. Declarant is the developer of certain real property in Washington County, Utah, which is more particularly described on Exhibit "A," attached hereto (the "Property"). The Property is located within Ledges East, a master planned community in Washington County, Utah which was established by Ledges Planning and Management, LLC, a Utah limited liability company.

B. The Master Declaration for Ledges East contemplates the division of real property that is subject to the Master Declaration into different tracts and/or neighborhoods. The Property is located within Ledges East, as identified on the vicinity map contained on the Plat and such other documents of record relating to the Ledges East. The Master Declaration contemplates that each tract or neighborhood may be developed into separate neighborhoods, which may have their own declarations establishing covenants, conditions, and restrictions specific to the particular neighborhood.

C. Declarant desires and intends to protect the value and desirability of the Property as a harmonious and attractive residential community. Therefore, Declarant will convey the Property subject to the following covenants, conditions, restrictions, and easements, which, along with the Articles and Bylaws, provides for a governance structure and a system of standards and procedures for development, maintenance, and preservation of the Property as a residential community.

D. This project is not a cooperative

**DECLARATION**

Declarant hereby declares that all of the Property described in Exhibit "A" shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Plat recorded concurrently herewith. This Declaration and the Plat shall be construed as covenants of equitable servitude; shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

**ARTICLE 1  
DEFINITIONS AND CONCEPTS**

The following definitions and concepts shall control in this Declaration. Any terms used in this Declaration that are not defined shall have their plain and ordinary meaning. In the event the same term is defined in this Declaration and in the Master Declaration, the term shall have the meaning set forth in the declaration being referred to.

1.1 **"Additional Property"** means and refers to any real property which is adjacent or contiguous to, or otherwise within the vicinity of the Property, whether or not so described herein or on the Plat. When Additional Property is annexed to this Declaration, it shall become part of the Property.

1.2 **"Architectural Committee"** means the committee established pursuant to Article 7 of the Master Declaration.

1.3 **"Articles"** means and refers to the Articles of Incorporation of Pocket Mesa Owners Association. The purpose of the Articles is to establish the Association as a non-profit corporation under Utah law.

1.4 **"Association"** Pocket Mesa Owners Association, a Utah non-profit corporation, its successors and assigns. The Association is a sub-association to the Master Association established by the Master Declaration.

1.5 **"Bylaws"** means and refers to the Bylaws of Pocket Mesa Owners Association. The purpose of the Bylaws is to govern the Association's internal affairs, such as (for purposes of example but not limitation) voting, elections, and meetings.

1.6 **"Common Area"** means and refers to all real property, including the improvements thereto and facilities thereon, which the Association owns, leases, or otherwise holds possessory or use rights in, at any given time, for the common use and enjoyment of the Owners. Common Area may be designated on the Plat or otherwise established as provided for in this Declaration.

1.7 **"Common Expenses"** means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred by the Declarant during the Declarant Control Period for initial development or other original construction costs unless a majority of the Class A Members approve.

1.8 **"Community Association Act"** means the Utah Community Association Act, Title 57, Chapter 8a of the Utah Code, and any amendments thereto.

1.9 **"Declarant"** means The Ledges at Snow Canyon LLC, and its successors and assigns.

1.10 **"Declarant Control Period"** means the period of time during which the Declarant has Class B membership status as provided for in Section 3.2(b), below.

1.11 **"Declaration"** means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder, and is subordinate to the Master Declaration.

1.12 **"Directors", "Board of Directors", or "Board"** means the governing body of the Association. When any action is contemplated or taken by the Association, it shall be done through the Board of Directors.

1.13 **"Entire Membership"** means all Members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all potential votes for both Class A and Class B members; provided however, that the term Entire Membership shall exclude the Class B member when it relates to or calls for an assessment or charge to the Entire Membership.

1.14 **"Governing Documents"** means, collectively, this Declaration, the Articles, the Bylaws, and any amendments or supplements thereto, and includes any rules, regulations, and resolutions established pursuant to the authority of the Declaration, Articles, or Bylaws.

1.15 **"Limited Common Area"** means and refers to a portion of the Common Area which has been designated for the primary or exclusive use of a particular Owner or Owners. Generally, Limited Common Area, as a portion of Common Area, is owned by the Association but reserved for the use and enjoyment of the Owner or Owners to whose Lot the Limited Common Area is adjacent or appurtenant. Limited Common Area may be designated on the Plat or otherwise established as provided for in this Declaration.

1.16 **"Lot"** means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership, but specifically excludes the Common Area and Limited Common Area.

1.17 **"Master Association"** means and refers to the Ledges East Master Owners Association, a Utah non-profit corporation, its successors and assigns.

1.18 **"Master Declaration"** means and refers to the Master Declaration of Covenants, Conditions, Restrictions of Ledges East, recorded in the Office of the Washington County Recorder on February 3, 2015, as DOC #20150003650. The Master Declaration was established by its declarant, Ledges Planning and Management, LLC, a Utah limited liability company, and any successors or assigns as referenced or provided for in the Master Declaration.

1.19 **"Member"** means and is synonymous with the terms "Owner" and "Unit Owner" and is used herein and in the Bylaws and Articles as a means to identify the Unit Owners as Members of the Association.

1.20 **"Mortgage"** means a mortgage, a deed of trust, a deed to secure a debt, or any other form of security instrument affecting title to any Lot.

1.21 **"Mortgagee"** means and refers to a lender holding a first Mortgage or deed of trust.

1.22 **"Owner"** means the entity, person, or group of persons owning fee simple title to any Lot which is within the Property. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one "Owner." The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership.

1.23 **"Plat"** means the subdivision Plat recorded concurrently herewith prepared and certified by a Utah Registered Land Surveyor and any amendments or replacements thereof, or additions thereto.

1.24 **"Property"** means that certain real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration, and, where the context requires, includes any improvements thereon.

1.25 **"Unit"** means a single family dwelling, with or without walls or roofs in common with other single family dwellings, and an appurtenant garage. When the term "Unit" is used it includes fee title to the real property lying directly beneath the single family dwelling, within Lot boundary lines, this, however, is not all the Lot in some instances as there may be Lot boundary outside the Unit walls. Ownership and Unit boundaries are depicted and described on the Plat. Where the context requires, such as provisions on lien rights and enforcement, the term Unit shall include the Lot.

1.26 **"Unit Owner"** means and is synonymous with the term "Owner"

1.27 **"Voting Representative"** means the person elected by the Members to cast the votes of all Members on Master Associations matters that require a vote.

## ARTICLE 2 PROPERTY RIGHTS

2.1. Owner's Acknowledgment; Notice to Purchasers. All Owners are given notice that the use of their Lots and the Common Area and Limited Common Area is limited by the covenants, conditions, restrictions, easements, and other provisions in the Governing Documents, as they may be amended, expanded, or modified from time to time, as well as the Master Declaration. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by said covenants, conditions, restrictions, easements, and other provisions in the Governing Documents, as well as the Master Declaration. All purchasers of Lots are on notice that the Association may have adopted changes to the Governing Documents that might differ from those that any purchaser might receive from, or that might have been disclosed by, the Owner from whom the purchaser is purchasing his or her Lot. Copies of current Governing Documents may be obtained from the Association. Any issue or question concerning the Master Declaration and any rule, regulation, or other matter concerning the Master Declaration should be referred to the Master Association.

### 2.2 Units.

(a) Ownership. Each Unit is owned in fee simple by the Owner, subject to the covenants, conditions, restrictions, and easements in this Declaration and other provisions of the Governing Documents.

(b) Activities within Units. No rule shall interfere with the activities carried on within the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source

of annoyance, all as may be determined by the Board or any committee designated by the Board or this Declaration to make such determinations, in their sole discretion.

(c) Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) Exteriors of Units. The exteriors of Units, including exterior walls and roofs, are hereby designated as Limited Common Area for purposes of architectural control and regulation of use.

### 2.3 Common Area.

(a) Ownership; Conveyance. Upon recording of the Plat Declarant will convey the Common Area, including Limited Common Area which is a portion of the Common Area, to the Association, free and clear of all financial encumbrances and liens, but subject to this Declaration, and easements and rights-of-way of record. The Association shall accept the deed of conveyance of the Common Area upon Declarant's presentment of the same.

(b) Rights of Use and Rules and Regulations Concerning the Common Area. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the Governing Documents. The Board shall have the right to establish and enforce rules and regulations governing the use of the Common Area, including but not limited to rights of use, hours of use, delegation of use, and standards of conduct. Additional rights to establish rules and regulations governing the Common Area may be set forth and established elsewhere in the Governing Documents.

(c) Board Authority and Rights in the Common Area. The Board shall have the right, for and on behalf of the Association, to:

(i) enter into agreements or leases which provide for use of the Common Area by a similar association, in consideration for use of the common areas and facilities of the other association or for cash consideration, or for use by third parties for cash consideration;

(ii) with the approval of at least seventy-five percent (75%) of Owners to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility;

(iii) grant easements for public utilities or other public purposes consistent with the intended use of the Common Area;

(iv) take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure; and

(v) take such other actions with respect to the Common Area which are authorized by or otherwise consistent with the Governing Documents.

(d) Declarant's Right of Use. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area, including any community buildings, without charge during the Declarant Control Period to aid in its marketing activities

2.4. Limited Common Area.

(a) Designation. The Declarant, during the Declarant Control Period, shall have the right to restrict portions of the Common Area, whether owned by Declarant or by the Association, in the nature of an easement for the primary or exclusive use of one or more particular Owners, by designating such portions of the Common Area as Limited Common Area. This designation may be made by: (i) indicating or designating on the Plat the Limited Common Area appertaining to one or more Lots or (ii) designating, depicting, and/or describing such Limited Common Area in any supplemental declaration or any exhibit thereto. The Declarant reserves the right to re-designate Limited Common Area and the maintenance obligations thereof as it deems necessary from time to time.

(b) Rights of Use and Rules and Regulations Concerning the Limited Common Areas. Each Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas reserved and designated exclusively for the use of his or her Lot, subject to the rights of the Declarant and the Board as set forth in the Governing Documents. The right of exclusive use and occupancy does not include the right to repaint, remodel, erect structures upon or attach any apparatus to the Limited Common Area without the express written consent of the Board or the Architectural Committee of the Master Association, as the case may be.

(c) Board Authority and Rights in Limited Common Area. The Board's right of regulation in the Limited Common Area includes all rights it possesses with respect to the Common Area which are not inconsistent with exclusive use to a particular Lot or Lots to which the Limited Common Area is assigned, and includes, but is not limited to, the right to regulate and control architectural and aesthetic appearances of the Limited Common Area.

2.5. Lots. Each Lot is owned in fee simple by the Owner. However, area within the surveyed Lot boundaries but outside the Unit walls even though part of the Lot and owned in fee simple by the Owner shall be treated as Limited Common Area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a Lot larger than the Unit is to allow flexibility in the original Unit construction. After the initial construction on a Lot, subsequent construction, if any, may occupy any portion of the surveyed Lot, subject to all other provisions of this Declaration.

2.6. Delegation of Use. Any Owner may delegate his right of enjoyment of the Common Area to the members of his family, his tenants, guests, licensees and invitees, but only in accordance with the applicable rules and regulations of the Association and other Governing Documents. The Board may, by rule, require Owners to forfeit their right of use in the Common Areas for so long as

the Owner has delegated his right of use in the Common Areas to his or her tenant. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by a Member, shall create a debt to the Association. Such debts owed to the Association as a result of damage to the Common Area and facilities shall be a specific assessment charged to the Owner.

2.7. Declarant's Reasonable Rights to Develop. No rule or action by the Association shall unreasonably impede Declarant's right to develop the Property.

ARTICLE 3  
ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner is a Member of the Association. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity.

3.2. Voting Rights. The Association has two classes of voting membership, Class A and Class B.

(a) Class A. Every Owner is a Class A Member with the exception of the Declarant, until Declarant's membership converts to Class A membership as provided for herein. Class A Members are entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, the group of such persons shall be a Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

(b) Class B. The Class B member is the Declarant. The Class B member is entitled to five votes for each Lot owned, however, Declarant's Class B membership status is not dependent or contingent upon Declarant's ownership of any Lot within the Property. Class B membership will cease and be converted to Class A membership, and the Declarant Control Period will end, on the happening of one of the following events, whichever occurs earlier: (i) the expiration of 10 years from the date of recording of this Declaration or (ii) by Declarant's express surrender of Class B membership status, which surrender must be in a written instrument signed by Declarant and recorded in the office of the Washington County Recorder. Unless the instrument specifies a different date, the date of surrender of Class B membership shall be the date of recording of the instrument.

3.3. Declarant's Voting Rights in Expansion Area. In the case of expansion (as provided under this Declaration), the class of voting membership appurtenant to Lots owned by Declarant in the Additional Property shall be Class B.

3.4. Voting Rights in the Master Association. The Members shall elect a Voting Representative and an alternate in the manner provided for in the Master Association Governing Documents. The Voting Representative shall be responsible for casting all votes allocated to the Members on all Master Association matters that the Master Association Board, by resolution, determines should be voted on by the Master Association Members.

3.5. Change of Corporate Status. The Association has been set up and established as a non-profit corporation under Utah law. However, as provided in the Community Association Act, Utah Code § 57-8a-221, the continuing existence and viability of the Association is not vested in its corporate status. During any period in which the Association is not incorporated or otherwise has a change of corporate status (e.g., involuntary dissolution under the Utah Nonprofit Corporation Act for failure to file for corporate renewal), the Governing Documents shall nevertheless continue to be effective as the Governing Documents of the Association, and the Association, the Board, and all officers and committees operating under the authority of the Governing Documents shall have all rights, power, and authority granted therein, and no Owner may escape or avoid any assessment, charge, lien, rule or other matter contained in the Governing Documents by virtue of such change of corporate status. In the case of non-incorporation, the Board is authorized, to the extent it deems necessary, and without approval of the Members, to re-incorporate under a same or similar name and such corporation shall be deemed the successor to the Association. In the event the Board does not reincorporate, the Association shall continue to operate and function under the Governing Documents as an unincorporated association.

3.6. Validity of Votes and Consents. Any consent or vote given by an Owner on any matter in the Governing Documents shall be valid for a period of ninety days, and shall be binding on any subsequent Owner who takes title of the Lot during that period of time.

3.7. Indemnification. The Board, and each member thereof, shall be indemnified by the Association against any loss, damage, claims or liability, including reasonable attorney fees, suffered or incurred by reason of such position, except to the extent such damage, claim, loss or liability is covered by any type of insurance; provided, however, that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with, any claim or liability arising out of that person's own willful misconduct or gross negligence.

3.8. Rulemaking Authority. The Board may, from time to time, subject to the provisions of the Governing Documents and Utah law, adopt, amend and repeal rules and regulations governing, among other things, use of any Common Area, parking restrictions and limitations, limitations upon vehicular travel within the Property, and restrictions on other activities or improvements on the Property which, in the opinion of the Board, create a hazard, nuisance, unsightly appearance, excessive noise, or offensive smell.

3.9. Notice: Promulgation of Rules. A copy of the rules and regulations, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Lot Owner within 15 days after the date of the Board meeting where the changes were made and may, but need not be, recorded. Upon such mailing or other delivery, said rules and regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. In addition to or in lieu of providing notice by mail, the Board may provide notice by electronic means such as electronic mail (e-mail) to Lot Owners and may require that Lot Owners, in addition to keeping the

Board informed as to their current mailing address, maintain a current e-mail address with the Board for such purpose.

3.10. Management Agreement (Property Manager). The Board may engage for the Association the services of a property manager to perform such duties and services as the Board shall authorize. The Board may delegate to and otherwise authorize the property manager to perform those services to which the Board itself may perform under the Governing Documents or the Act, and those services to which the Act otherwise authorizes a manager to perform. Any contract or agreement for services entered into by the Board for and on behalf of the Association and the property manager shall not exceed a term of two (2) years. Fees, costs, and other charges of the property manager shall be Common Expenses. The property manager may also provide services to individual Owners, such as leasing individual Units as may be determined between the property manager and the Owner; *provided however*, that services performed for individual Owners which are not performed for all the Association shall not be Common Expenses but shall be charged to such Owners as the Owners and the property manager may determine. Nothing in this Declaration shall prohibit the Association from contracting for any service with any person or entity affiliated with, or in common ownership with, Declarant; *provided however*, that any such contract shall be for prices and terms that are competitive in the local market, and in no case shall the term of any such contract exceed one year.

#### ARTICLE 4 FINANCES AND ASSESSMENTS

4.1. Assessments; Authority. The Association is hereby authorized to levy assessments against the Owners as provided for herein. The following are the types of assessments that may be levied by the Association, which are more particularly described below: (1) annual assessments or charges; (2) special assessments; (3) specific assessments; (4) emergency assessments; (5) any other amount or assessment levied or charged by the Board pursuant to this Declaration; and (6) interest, costs of collection and reasonable attorney fees, as hereinafter provided.

4.2. Creation of Lien and Personal Obligation of Assessments. Excepting Declarant, each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association all assessments and charges, however denominated, which are authorized in the Governing Documents. All such amounts shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment or amount is charged, which lien shall arise when the Owner fails or refuses to pay an assessment when due. Such assessments and other amounts shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set off shall be claimed or allowed for any alleged failure of the Association, the Board, or Declarant to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action it takes.

4.3. Purpose of Assessments. The assessments levied by the Association shall be used to advance the purposes for which the Association was formed, as set forth and articulated in the Governing Documents. The assessments may provide for, but are not limited to, the payment of taxes

on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Area and/or Limited Common Area; the payment of the cost of repairing, replacing, and maintaining any roadways; the payment of administrative expenses of the Association; the payment of insurance deductible amounts; the payment of assessments levied against the Association by the Master Association pursuant to the authority of the Master Declaration; the establishment of capital and operational reserve accounts; the payment of any professional services deemed necessary and desirable by the Board; and other amounts required by this Declaration or that the Board shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Board, for the payment of other charges including (without limitation) maintenance, management, and utility charges.

4.4. Initial Annual Assessments. The Declarant shall initially establish the amount of the annual assessments. Thereafter, the establishment of annual assessments shall be according to the procedures and requirements of Section 4.5.

4.5. Annual Assessments, Budgeting.

(a) Adoption of Budget. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for that fiscal year, for the purpose of calculating and establishing the annual assessments for that fiscal year. Annual assessments for Common Expenses shall be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance and operation of the Common Area; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, and common lighting within the Common Area; routine renovations within the Common Area; wages; common water and utility charges for the Common Area; legal and accounting fees; management fees; expenses and liabilities from a previous assessment period; the supplementing of the reserve fund for general, routine maintenance, repairs, and replacement of the Common Area as required by section 57-8a-211 of the Community Association Act, Utah Code § 57-8a-211.

(b) Notice of Budget and Assessment. The Board shall send a copy of the final budget, together with notice of the amount of the annual assessment to be levied pursuant to such budget, to each Owner at least thirty (30) days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved in writing by Members representing at least fifty-one percent (51%) of all eligible votes in the Association. Any such petition must be presented to the Board within ten days after notice of the budget and assessment. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings pursuant to the Bylaws. Unless the budget for the assessment is disapproved by the Members as set forth above, the Board is thereafter authorized to levy the assessment as provided for herein. During the Declarant Control Period, the Owners may not disapprove any budget.

(c) Failure or Delay in Adopting Budget. The failure or delay of the Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses and in

the event of such failure or delay, all Owners shall continue to pay assessments on the same basis as during the last year for which an assessment was made until notified of the amount of the new annual assessment which is due on the first day of the next payment period which begins more than thirty days after such new annual or adjusted budget is adopted and the Owners receive notice as provided herein.

(d) Automatic Budget Approval. Notwithstanding the foregoing, if the budget proposed by the Board will increase the annual assessment no greater than 5% more than the previous annual assessment, then such budget and corresponding annual assessment shall be automatically approved and effective upon a 30-day notice.

(e) Adjustment of Budget and Assessment. The Board may revise the budget and adjust the annual assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth in this Section 4.5(b), provided, however, that such an adjustment is exempt from the requirements of Section 4.5(b) if the adjustment would either decrease the annual assessment or increase the annual assessment by no greater than 3.25%.

4.6. Special Assessments. In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only to cover unbudgeted expenses or expenses in excess of those budgeted, including but not limited to defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Area or Limited Common Area and any structures, fixtures and personal property related thereto. Any such special assessment may be levied against the Entire Membership (excluding Declarant) if such special assessment is for Common Expenses. Except as otherwise provided in this Declaration, any special assessment shall require the affirmative vote or written consent of a majority of the Entire Membership, if a Common Expense. Special assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal years in which the special assessment is approved.

4.7. Specific Assessments. The Association shall have the power to levy specific assessments against a particular Lot to cover costs incurred in bringing any Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any specific assessment under this subsection.

4.8. Emergency Assessments. Notwithstanding anything contained in this Declaration, the Board, without Member approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the emergency assessment. If such expenditure was created by an unbudgeted utility, maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual assessment. An emergency situation is one in which

the Board finds: (a) an expenditure, in its discretion, required by an order of a court, to defend the Association in litigation, or to settle litigation; (b) an expenditure necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered; (c) an expenditure necessary to repair, maintain, or cover actual Association expenses for the Property or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or (d) such other situations in which the Board finds that immediate action is necessary and in the best interests of the Association.

4.9. Uniform Rate of Assessment. Unless otherwise provided for in this Declaration or elsewhere in the Governing Documents, assessments must be fixed at a uniform rate for all Lots; *provided, however*, that no assessments shall accrue against Lots owned by Declarant during the Declarant Control Period.

4.10. Declarant's Option to Fund Budget Deficits. During the Declarant Control Period, Declarant may, but is not obligated to, fund any budget deficit of the Association, including, without limitation, funding any initial capital or operational reserve fund. In the event Declarant funds any budget deficit, it shall not establish any obligation by Declarant to continue to fund any future deficits.

4.11. Payment Due Dates.

(a) The assessments provided for herein shall commence to accrue against a Lot upon conveyance of the Lot to a bona fide purchaser, adjusting the amount of such assessment according to the number of months remaining in the fiscal year.

(b) Due dates shall be established by resolution of the Board. Installments of assessments may be levied and collected on a monthly, quarterly, semi-annual, or annual basis, as determined by resolution of the Board.

(c) The Board may require advance payment of assessments at closing of the transfer of title to a Lot.

(d) Payment of assessments shall be applied first to any accrued interest, then to any accrued costs, charges, and fees, and then to the principal amount of the assessment. No Owner shall have the right to direct the Association or its agents or employees to apply payments in any other manner or method and any such attempt to do so will not be recognized.

4.12. Effect of Non-Payment of Assessment; Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Board shall determine appropriate) until paid. In addition, the Board may assess a late fee for each delinquent installment that shall not exceed \$25.00 on any unpaid balance after the grace period of 10 days from the due date.

(a) Remedies. To enforce this Article, the Board may, in the name of the Association:

(i) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving Association's lien for the assessment;

(ii) after giving notice by certified mail as required by section 57-8a-303 of the Community Association Act, Utah Code § 57-8a-303, foreclose the lien against the Lot in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, to the same extent as though the Association lien was a trust deed;

(iii) restrict, limit, or totally terminate any or all services performed by the Association on behalf of the delinquent Owner;

(iv) terminate, in accordance with section 57-8a-309 of the Community Association Act, Utah Code § 57-8a-309, the Owner's right to receive utility services paid as a Common Expense and/or terminate the Owner's right of access and use of any recreational facilities;

(v) if the Owner is leasing or renting his Unit, the Board may, in accordance with section 57-8a-310 of the Community Association Act, Utah Code § 57-8a-310, demand that the Owner's tenant pay to the Association all future lease payments due from the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid;

(vi) exercise any other rights authorized by the Community Association Act for non-payment of assessments and other charges;

(vii) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Lot remains unpaid;

(viii) accelerate all assessment installments that will become due within the subsequent twelve (12) months so that all such assessments for that period become due and payable at once. This acceleration provision may only be invoked against an Owner who has been delinquent in paying any assessment or installment two (2) or more times within a twelve (12) month period; and/or

(ix) Record a lien against the Lot on any installment payment more than 60 days past due with cost of such being added to the Owner's account.

(b) Attorney Fees and Costs. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred by the Association, together with, where applicable, an account for the reasonable rental for the Unit from time to time of commencement of the

foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

(c) Power of Sale. A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for purposes of power of sale foreclosure. The Declarant hereby conveys and warrants pursuant to Utah Code Sections 57-1-20 and 57-8a-302 to \_\_\_\_\_ with power of sale, the Lots and Units and all improvements to the Lots and Units for the purpose of securing payments of assessments under the terms of this Declaration.

4.13. Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein: (a) all property dedicated to and accepted by any local public authority; (b) all Common Area; (c) all Lots or other real property owned by Declarant; and (d) any other property declared exempt as set forth in this Declaration or within any Plat.

4.14. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to (1) a lien or encumbrance recorded before the Declaration is recorded, (2) a first or second security interest secured by a mortgage or trust deed that is recorded prior to any notice of lien filed by or on behalf of the Association, or (3) a lien for real estate taxes or other governmental assessments or charges against the Lot.

4.15. Termination of Lien. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve an Owner from personal liability for assessments coming due after taking title or from the lien of such later assessments.

4.16. Assessments and Other Charges Levied by the Master Association. Any assessments, fees, or other charges levied by the Master Association pursuant to the authority of the Master Declaration against any individual Owner shall, if not levied specifically against the Association and passed through to the Members as a Common Expense, be paid to the Master Association as required by the Master Declaration. Each Owner hereby designates and authorizes the Association to (a) receive notices of assessment on behalf of such Owner, (b) collect Master Association assessments from such Owner, and (c) remit such collected Master Association assessments to the Master Association. The Association shall upon request of the Master Association include the Master Association assessments with the Association dues and assessments and provide to the Master Association the names and addresses of all Owners within the Association together with a statement listing those Owners who have not paid an assessment owed to the Master Association and the amount of such non-payment. The Master Association may, in its discretion, send notices to and collect Master Association assessments directly from any Owner in lieu of the Association. Owners shall receive no offset in any assessments by the Association as a result of any assessment, fee, or charge levied against them, individually, by the Master Association.

4.17. Books, Records, and Audit.

(a) The Association shall maintain current copies of the Governing Documents and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. An Owner or holder, insurer or guarantor of a first Mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

(b) The Association shall prepare a roster of Owners in the Property and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times.

(c) The Association shall, upon written request, and for a reasonable charge not to exceed the amounts provided in the Act, furnish a written statement signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such written statement, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

#### ARTICLE 5 INSURANCE

##### 5.1. Casualty Insurance on Insurable Common Area.

(a) The Board shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses which shall be included in the regular annual assessments made by the Association.

(b) In addition to casualty insurance on the Common Area, the Board may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Units including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the Owners. If the Association becomes aware that such insurance is not available, the

Association shall, within seven calendar days after becoming aware of that fact, give all Owners notice as provided in Utah Code § 57-8a-214.

(c) The Association policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements herein. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and opportunity to be heard, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owner and the Owner's Lot, to be collected as an assessment against the Owner's Lot.

5.2 Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available, unless the project is terminated, the repair would be illegal, or at least 75% of the allocated voting interests vote not to rebuild and each Owner of a dwelling on a Lot that will not be rebuilt votes not to rebuild. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Owner. In the event that the Association is maintaining blanket casualty and fire insurance on the Units, the Association shall repair or replace the same to the extent of the insurance proceeds available. In the event of damage or destruction by fire or other casualty to any portion of the Property covered by insurance written in the name of the Association, the Board is empowered to and shall represent the Members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each Owner for this purpose.

5.3. Liability Insurance. The Board shall obtain a comprehensive policy of public liability insurance covering all of the Common Area for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

5.4 Fidelity Insurance. The Board may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Board shall seek a policy which shall (1) name the Association as obligee or beneficiary, (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

5.5 Annual Review of Policies. The Board shall review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed, and to ensure

that insurance coverage complies with currently existing legal requirements. The Board may, to the extent it deems necessary to more fully protect and insure the Association and its property, or to otherwise comply with evolving laws and insurance standards, modify the coverage standards set forth in this Article 5 without the necessity of amending this Declaration.

ARTICLE 6  
ARCHITECTURAL CONTROLS AND STANDARDS

6.1. Architectural Committee. The Property is subject to the Architectural Committee created pursuant to Article 7 of the Master Declaration.

6.2. Architectural Committee Approval. No Owner or other person may attach, erect, install, or place anything on the exterior of Units or the interior of Units where the same might be visible from outside the Unit, or other buildings and structures in the Property without first obtaining approval from the Architectural Committee. In this regard, no structure, building, fence, wall, or thing shall be placed, erected, or installed upon any Lot or to any Unit and no improvements or other work (including exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Property until the plans and specifications showing, without limitation, the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the Architectural Committee in accordance with the provisions of the Master Declaration and any rules and regulations adopted by the Architectural Committee. Architectural Committee approval shall be required regardless of whether the structure, building, fence, wall, or thing to be constructed, placed, erected, or installed is new, or an addition, extension or expansion, change or alteration, or re-construction, replacement, re-erection, or re-installation of any of the foregoing.

6.3. Rules, Regulations, Guidelines and Procedures. The Architectural Committee may establish rules, regulations, guidelines and procedures to govern the Property, including Architectural Guidelines provided for in the Master Declaration.

ARTICLE 7  
PARTY WALLS

7.1. General Rules of Law to Apply. Each wall, including any floor or ceiling, that is built as a part of the original construction upon the Property which serves and/or separates any two adjoining Units shall constitute a party wall. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

7.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in

proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.4. Exposure to Elements. Notwithstanding any other provision of this Article, an Owner who by negligent or willful actions causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

7.5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

7.6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator within 10 days of their selection, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within 10 days after written request to do so, the Board shall select an arbitrator for the refusing party.

#### ARTICLE 8 MAINTENANCE

8.1. Association's Responsibility. The Association shall be responsible for maintenance of the Common Area and the Limited Common Area which is not designated to any particular Lot. The cost of such maintenance shall be a Common Expense. This maintenance includes but is not limited to upkeep of all landscaping, upkeep and maintenance of all roadways, street lights, sidewalks, and parking areas, and upkeep and maintenance of all buildings and facilities which constitute part of the Common Area and Limited Common Area. The Association shall not have any responsibility for upkeep and maintenance of the Lots or Units, unless expressly required by this Declaration or expressly assumed by the Association pursuant to the authority of this Declaration.

8.2. Owner's Responsibility. Each Owner shall be responsible for maintenance of his or her Lot and Unit and any Limited Common Area designated for the exclusive use and occupancy of his or her Lot, in a manner consistent with all applicable provisions of the Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association by the Governing Documents. The Board shall, however, in the default of the Owner to perform maintenance which is the Owner's responsibility, and after ten (10) days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each Lot and/or Unit and the Limited Common Area adjacent and appurtenant thereto (as designated on the Plat or by the Declarant) and may charge the Owner the costs of such maintenance as a specific assessment.

8.3. Access at Reasonable Hours. For the sole purpose of performing the maintenance required or otherwise authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours.

8.4. Other Services Provided by Association. To the extent determined to be necessary or desirable by the Board, the Association may provide additional services to the Owners as a Common Expense or specific assessment, as appropriate.

8.5. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a Lot outside the walls of the Unit, and the Limited Common Areas adjacent and appurtenant thereto may be altered by rule of the Association.

#### ARTICLE 9 CONDEMNATION; PARTITION

9.1. Condemnation. Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Master Association Board and, if it is within the Declarant Control Period, by the Declarant) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Master Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, during the Declarant Control Period, and Members representing at least seventy-five percent (75%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Section 5.2 regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

(b) If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

9.2. No Partition. Except as otherwise permitted in this Declaration, the Common Area shall remain undivided and no person or entity shall bring any action for the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not be construed to prohibit the Board from acquiring and disposing of title to real property which may or may not be subject to this Declaration.

#### ARTICLE 10 USE AND CONDUCT RESTRICTIONS AND REQUIREMENTS

The following use and other restrictions shall apply to the Property. These restrictions are in addition to those established by federal, state, or local law and ordinance and those which may be set forth elsewhere in the Governing Documents, or in the Master Declaration.

10.1. General Use Restrictions. All of the Property which is subject to this Declaration is hereby restricted to residential dwellings and buildings in connection therewith, including but not limited to community buildings on the Common Area, if any. All buildings or structures erected on the Property shall be of new construction and no buildings or structures shall be removed from other locations to the Property. After the initial construction on a Lot, no subsequent building or structure dissimilar to that initial construction shall be built on that Lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time.

10.2. Quiet Enjoyment. No noxious or offensive activity shall be carried on upon any part of the Property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Owners, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

10.3. Parking.

(a) No motor vehicle which is inoperable shall be allowed within the Property, and any motor vehicle which remains parked on any street within the Property for over 72 hours shall be subject to removal by the Association, at the vehicle owner's expense. Upon demand, the owner of the vehicle shall pay any expense incurred by the Association in connection with the removal of that owner's vehicle. If the vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Lot and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of assessments.

(b) If parking spaces are designated on the Plat with numbers corresponding to Lot numbers, each such space is for the exclusive use of the Owner with the corresponding number. If parking areas are not designated on the Plat with Lot numbers, the Board may assign vehicle parking space for each Lot, if applicable. Parking spaces within the Property shall be used for parking of motor vehicles actually used by the Owner or the Owner's immediate family or guests for personal use, and not for commercial use.

(c) Recreational vehicles, boats, travel trailers and similar personal property may not be parked within the Property, except temporarily for purposes of loading and unloading.

10.4. Timeshares Prohibited. No Owner shall offer or sell any interest in his Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

10.5. Signs. The Board shall have the right to regulate the display, use, size, and location of signs within the Property. The right to regulate includes the right of prohibition. Notwithstanding the Board's right of regulation, no signs, advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on the exterior of any Unit, on any Lot, within or upon the Common Area, or any portion of the Property. Nor shall such signs, billboards, objects of unsightly appearance, or nuisances be placed or permitted to remain within any Unit where the same are visible from the streets, or roadways. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the Declarant

Control Period or by the Association in furtherance of its powers and purposes set forth in the Governing Documents, as the same may be amended from time to time.

10.6. Compliance with Laws. No Owner shall permit anything to be done or kept on his Lot or in his Unit or any part of the Property that is in violation of any applicable federal, state, or local law, ordinance, or regulation.

10.7. Commercial Activity. No commercial activities of any kind whatever shall be conducted on any portion of the Property, including an in-home business as defined by local ordinances. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth in the Governing Documents, as the same may be amended from time to time or to any on-site property manager under contract to perform services for the Association.

10.8. Smoking. The Board is authorized to, by rule or resolution, prohibit tobacco smoking within or around the Common Areas and any other portion of the Property, including outside Units or on around Limited Common Areas (including Unit patios), when it is determined that the smoke or the smell from the smoking might filter or drift into other Units or interfere with the use and enjoyment of the Property by other Owners. In addition, the Board is authorized to enforce and otherwise bring an action for nuisance under the provisions of Title 78B, Chapter 6 of the Utah Code for and on behalf of any Owner against any other Owner or occupant whose smoking creates or constitutes a nuisance under said provision of the Utah Code.

10.9. Pets and Animals.

(a) Restrictions. The Board has the right to regulate and restrict, by rule, the keeping and harboring of pets and animals within the Property, including the keeping and harboring of pets and animals within the Units or on any Lot. This right includes the right to restrict the type, breed, or species of animal, the number of animals which may be kept, the areas in which the animals may be kept or taken, and to completely eliminate the keeping and harboring of pets. Until such time as the Board adopts a policy expressly authorizing the keeping of pets and animals, the same shall be prohibited within the Property. The Board may also establish procedural rules and regulations to implement its rules which should include provisions for notice and hearing, and the right to charge an impact fee not more than \$250.00 for the pet and an additional refundable security deposit not to exceed \$500.00. Commercial breeding of pets and animals is prohibited within the Property and may not be allowed or authorized by Association rule or resolution.

(b) Owner Responsibility. In the event the Board authorizes the keeping of pets and animals, Owners must take due care to ensure that their pets and animals do not make excessive noises, cause any offensive smell, or create any physical threat to the safety of any other Owner or person within the Property, or the safety of any guests, tenants, or invitees, particularly among children. Owners are responsible for any property damage, injury, or disturbance that their pet may cause or inflict anywhere within the Property. To the extent the Association is subjected or otherwise exposed to any liability, claims, damages, costs, losses, or expense as a result of the actions of an animal, the Association has the right to make

a claim against the Owner. Owners shall indemnify the Association from any claims, damages, or causes of action that arise from or otherwise relate to the conduct of their pets. This indemnification shall include any attorney fees, costs, and expenses incurred by the Association.

10.10. Hazardous Activities and Substances. No Owner shall engage in or permit any of said Owner's guests, visitors, tenants, or invitees to engage in any activity that will cause an increase in insurance premiums for insurance coverage on the Property nor shall any Owner or any Owner's guests, visitors, tenants, or invitees engage in any activity that will cause or permit any hazardous substance or material to be stored, used or disposed of on or within the Property.

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

10.12. Exterior Television or Other Antennas. To the extent not prohibited by law, no television, radio, or other electronic antenna or device of any type shall be erected, constructed, affixed, placed or permitted to remain on the exterior of any Unit, on any Common Area, or the exterior of any building or structure upon the Property, or within any Unit where the same is visible from outside the Unit. The Board is hereby authorized to establish and promulgate rules and regulations to govern the placement and installation of antennas covered by the Federal Communications Commission's rules on "Over-the-Air Reception Devices," which require such antennas to be screened from street level view.

10.13. Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. Garbage shall be placed in proper containers. Garbage containers shall be kept inside of the garages of Units.

10.14. Pest Control. No Owner or Unit occupant shall permit anything or condition to exist within or upon the Lot or Unit which would induce, breed, or harbor insects, rodents, or other pests. In addition to such pest control services as may be provided by the Association, each Owner shall perform such pest control activities within and upon the Lot and Unit as may be necessary to prevent insects, rodents, and other pests from being present.

10.15. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Property. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Property.

10.16. Interior Utilities. All utilities, fixtures and equipment installed within a Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act or any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other Lots or Owners.

10.17. Skateboards and Rollerblades. Skateboarding and rollerblading are prohibited within the Property.

ARTICLE 11  
LEASES AND LEASING

11.1. Purpose and Intent of Lease Restrictions. The purpose of this Article is to further Declarant's intent to protect the value and desirability of the Property as a harmonious and attractive residential community and to avoid any deterioration of the same into a transient-apartment like community.

11.2. Notification of Board. An Owner who enters into a lease or rental agreement must first notify the board in writing and pay a refundable security deposit not to exceed \$500.00. A copy of any such lease or rental agreement must be submitted to the Board within 15 days after execution. Failure to provide notice and a copy of the lease to the Board may result in a fine of \$250.00. An Owner must comply with the foregoing notice provision for each tenant with which it enters into a lease or rental agreement and for each renewal of any existing lease or rental agreement.

11.3. Leasing Restrictions. Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the other Governing Documents and that any failure by tenant to comply with the terms of such documents shall be a default under the lease. Units may be leased only in their entirety. There shall be no subleasing of Units or assignment of leases without prior written approval of the Board. To further Declarant's intent, as set forth above, Owners may only lease their Units to Single Families. For purposes of this Article, the term "*Single Family*" means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than four persons who maintain a single housekeeping unit within the Unit. Any lease or rental agreement, whether an initial agreement or any renewal thereof, shall provide for a minimum lease term of not less than six (6) months; *provided however* that the Board shall have the power to allow leases for a term of less than six months upon a showing by the Owner that such a lease is required to avoid undue hardship, and may issue exemptions for certain Lot Owners as required by law. Furthermore, the Board is authorized to make this Article more restrictive, including but not limited requiring longer minimum lease periods and establishing rental caps on the number of Units that may be rented within the Property. No more than 40% of the Units may be rented at any given time. The Association shall establish rules and procedures to govern administration and enforcement of these rental restrictions, as provided by in the Utah Community Association Act, Utah Code §57-8a-209.

11.4. Enforcement Against Owner. Notwithstanding any other rights of enforcement under this Declaration and other Governing Documents, or by applicable law, the Association may impose a fine, not to exceed fifty percent (50%) of the amount of the maximum annual assessment, on the Owner, which shall constitute a lien upon such Owner's Lot, for each violation by Owner's tenant of this Declaration or other Governing Documents. Such fine shall be imposed after a 10 day notice is given to the Owner of such violation. The Association may impose an additional fine on the Owner for each day such violation continues after the 10 day notice period provided herein, which additional fines shall constitute a lien upon such Owner's Lot. The Association need not provide any additional notice prior to fining an Owner for a continuing violation. There shall be added to any such fine reasonable attorney fees and costs incurred by the Association in enforcing this Article. Any fine

levied pursuant to this Article shall be recoverable by the Association in the same manner as an assessment under Article 4, and shall create a lien in favor of the Association against the Owner's Lot in the same manner as an assessment.

11.5. Enforcement of Lease by Association. Any lease or rental agreement for any Unit within the Property shall include the following language, and, if such language is not expressly contained in such lease or rental agreement, the Owner leasing his Unit hereby agrees that such language shall be deemed incorporated into the lease:

**NOTICE:** Any violation of the Declaration of Covenants, Conditions, and Restrictions of \_\_\_\_\_ ("Declaration") and/or any rules and regulations adopted pursuant thereto (collectively "Violations"), by the tenant, any occupant, or any guest of tenant, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the tenant in accordance with Utah law. The Owner hereby delegates and assigns to the Board of Directors of the \_\_\_\_\_ Owners Association, or any management company which contracts with the Association, power and authority of enforcement against the tenant for breaches resulting from any Violations, including the power and authority to evict the tenant as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Board proceeds to evict the tenant, any costs, including reasonable attorney fees, court costs, and any other expenses incurred by the Association associated with the eviction shall be an assessment and lien against the Unit.

11.6. Cumulative Nature of Remedies. The remedies provided in this Article are cumulative and in addition to any remedies provided in this Declaration or at law or in equity.

11.7. Administrative Fee. The Board may establish a monthly administrative fee that it may levy against Owners who lease their Units or do not occupy their Units as a primary residence. The administrative fee shall not exceed twenty percent (20%) of the amount of the annual assessment. The Board shall provide 30 days prior written notice of the amount of such administrative fee prior to levying the same against an Owner. The administrative fee shall constitute a specific assessment against such Owners.

## ARTICLE 12 SAFETY AND SECURITY

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and security of their property within the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the level of safety or security which each person provides for their self and their property, such as contracting with a private security company or courtesy patrol. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and other occupants of his Unit that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and loss or damage to property, including Units and their contents, resulting from the acts of others.

**ARTICLE 13**  
**EASEMENTS**

13.1. Encroachments. Each Lot and the Property included in the Common and Limited Common Areas shall be subject to an easement for minor encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. In the event the structure containing Units is partially or totally destroyed, and then rebuilt, the Owners of the Units so affected agree that minor encroachments of parts of the adjacent Units or Common or Limited Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

13.2. Utilities. There is designated on the Plat easements upon, across, over and under the Property for public utility purposes. By virtue of the easements, it shall be expressly permissible for all public utilities serving the Property to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Property, provided that all such services shall be placed underground, except that, if necessary, said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property in such a way as to unreasonably encroach upon or limit the use of the Common Area or Limited Common Area or any structure thereon. In the initial exercise of easement rights under this Section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this Section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said Property without conflicting with the terms hereof. Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use in the Common and Limited Common Areas, and the right to connect to and use roadways and utilities owned or controlled by the Association or serving the Property. The Declarant reserves the right to execute agreement(s) which may confer on itself or adjacent landowners or Owners associations the right to use Common Area and Limited Common Area and common facilities, including (without limitation) recreational facilities.

13.3. Police, Fire and Ambulance Service. An easement is hereby granted to all police, fire protection ambulance services and all similar persons to enter upon the streets and Common Area and Limited Common Area in the performance of their duties.

13.4. Maintenance by Association. An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the Common Area and Limited Common Area, if any, and any Lot to perform the duties of maintenance and repair.

13.5. Drainage and Irrigation Easements. Declarant reserves for itself and its successors and assigns, and for the Association, and its officers, agents, employees, and successors and assigns, an easement to enter on, across, over, in and under any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Declarant also reserves the right to use or delegate the use of any irrigation ditches existing on the Property on the date this Declaration is recorded, and Declarant reserves for itself and its successors and assigns the right to construct, access and maintain additional irrigation ditches and lines on the Property for the maintenance of the Common Area and for such other purposes as Declarant may from time to time deem appropriate.

13.6. Owners' Easements of Enjoyment. Every Owner has a right and easement of use and enjoyment in and to the Common Area and Limited Common Area, if any, which is designated by the Declarant for the exclusive use of an Owner's Lot. This easement is appurtenant to and passes with the title to every Lot, subject to the provisions of the Governing Documents. An Owner has no easement of use of the air space outside of the boundaries of his Unit or, in the case of a patio or deck, outside the confines of the patio or deck as depicted on the Plat. Therefore, subject to the Board's right of regulation, each Owner's easement of use with respect to an appurtenant patio or deck shall not extend (i) horizontally beyond or outside of the center line of any wall or other exterior surface constituting the perimeter boundary of the patio or deck or (ii) vertically beyond the interior surface of any covered area or ceiling over the patio/deck. In the event that a patio or deck is uncovered, the Owner's easement of use of the airspace for such patio or deck shall not extend beyond the height of the interior surface of the ceiling within the Owner's Unit.

13.7. Easement for Declarant. The Declarant shall have a transferable easement over and on the Common Areas and facilities and utilities for the purpose of making improvements on the Property or on any additional land under the Declaration, or any development, related or unrelated, on land described herein or adjacent to the Property and for the purpose of doing all things reasonably necessary and proper in connection with the same.

13.8. Reservation of Easements by Declarant. The Declarant hereby reserves to itself during the Declarant Control Period the right to reserve easements over, beneath, and through the Property, including over the Common Area and Limited Common Area and related facilities, for the purpose of making improvements to and developing the Property or on any additional land submitted under the Declaration, including but not limited to construction, marketing, installation and upkeep of landscaping features, entrance features, project signage, street lights, paths, trails or sidewalks or other facilities or things benefiting the Property. The Declarant reserves to itself during the Declarant Control Period the right to make any dedications and to reserve, grant, vacate, or terminate any easements, rights-of-ways and licenses as may be reasonably required by any governmental authority or to carry out the intent and design of the Declarant's plan for development of the Property, without compensation therefor.

13.9. Easements of Record. The easements provided for in this Article shall in no way affect any other recorded easement.

13.10. Limitations on Easements. In no event shall any easement granted or reserved herein be construed to or have the effect of permitting entry into the interior portion of any Unit.

#### ARTICLE 14

##### SPECIAL DEVELOPMENT RIGHTS

14.1. Intent and Purpose of Special Development Rights. In addition to any other rights granted or reserved to the Declarant in this Declaration and the other Governing Documents, and notwithstanding any covenants, conditions, restrictions, or other provisions of limitation within this Declaration, the Declarant, as the developer of the Property, is granted special development rights. These combinations of rights maximize the flexibility of the Declarant to adjust the size and mix of the Property to the demands of the marketplace before, during, and after development of the Property. This Declaration shall be liberally construed to advance Declarant's rights and interest in developing the Property.

14.2. Expansion of the Property. The Declarant shall have the right to expand the Property by unilaterally subjecting any Additional Property, in whole, in part, or in phases, to this Declaration during the Declarant Control Period.

(a) Expansion Procedure. The Declarant shall indicate its intent to have such Additional Property bound by this Declaration on the plat of such Additional Property and shall record a declaration of annexation or supplemental declaration including and subjecting such Additional Property to this Declaration. Thereafter, such Additional Property shall be considered as part of the Property in all respects, and lots therein shall constitute Lots under this Declaration.

(b) Use of Expansion Property. Any Additional Property annexed hereto by the Declarant shall be exclusively for residential single-family dwellings, architecturally compatible to the existing Units, similar to the Units already constructed, constructed out of similar materials, with similar Lot size. The Declarant shall have the sole discretion as to development of the Common Area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such Common Areas shall be owned by the Association.

14.3. Withdrawal of Property. So long as it has the right to expand the Property, Declarant shall have the right to remove any portion of the Property which has not yet been improved with structures from the coverage of this Declaration. The procedure for such withdrawal shall follow the procedure for expansion as provided in this Article.

14.4. No Obligation to Expand or Develop. Declarant has no obligation to annex any additional land to the Property or to develop or preserve any portion of additional land in any particular way or according to any particular time schedule.

14.5. Municipal Zoning and Subdivision Approvals. The Declarant shall have the right to further subdivide the Property and to apply for any zoning or subdivision approvals or permits from Washington County, or any other applicable governmental authority with respect to the Property or any adjacent property owned by Declarant, whether or not such adjacent property is annexed into the Property. This right includes but is not limited to applying for and obtaining zoning permits, subdivision approvals, plat approvals, or approvals to amend the Plat or any plats. Further, except for any such approval that would (a) affect title to the Owner's Unit or (b) alter the boundaries of an Owner's Lot, each Owner hereby waives his or her right to object to any such approval sought by Declarant, and, to the extent the approval and consent of any Owner is required under state or local law each Owner agrees to sign the application or other documents required for such action.

14.6. Dedication of Common Area. Notwithstanding anything to the contrary in this Declaration, during the Declarant Control Period the Declarant shall have the unilateral right to convey, transfer, sell, assign, or otherwise dedicate all or part of any Common Area to Washington County or such other governmental entity or any third party as it deems necessary and appropriate. In the event the Common Area has already been conveyed to the Association, the Association shall approve and join in the dedication.

14.7. Declarant Business, Marketing, and Sales. Notwithstanding any provisions to the contrary contained in this Declaration or any other Governing Documents, it shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots during the Declarant Control Period, and upon such portion of the Property including lots or Common Area, if any, as Declarant deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of any Units which have not been conveyed to purchasers or any Common Area thereon, including any Common Area, community buildings, without charge during the Declarant Control Period to aid in its marketing activities.

14.8. Additional Development Rights. The Declarant shall have the right to (a) dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; (b) convert any part or portion of the Property to a different regime of residential ownership; or (c) create or designate additional Common Area or Limited Common Area within the Property.

14.9. Assignment of Declarant's Rights. Any and all rights and powers of the Declarant contained in this Declaration and other Governing Documents may be delegated, transferred or assigned by the Declarant, in whole or in part. To be effective, any such delegation, transfer or assignment must be in writing, signed by Declarant, indicate the extent and nature of such assignment, and be recorded in the Office of the Washington County Recorder

ARTICLE 15  
AMENDMENT

15.1. By Class A Members. Except as otherwise specifically provided herein, this Declaration may be amended, modified, extended, or revoked, in whole or in part, by the affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of Owners representing at least sixty seven percent (67%) of the Entire Membership in the Association. Notwithstanding the above, the percentage of votes necessary to amend a specific provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

15.2. By Declarant. Declarant has the right to unilaterally amend, modify, extend, or revoke this Declaration for any purpose during the Declarant Control Period, with or without notice to the Class A Members. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Lot; (d) to satisfy the requirements of any local, state, or federal governmental agency; (e) to bring the Declaration into compliance with the provisions of the Master Declaration; or (f) to correct any scrivener's error. However, any such amendment occurring after the Declarant Control Period shall not adversely affect the title to any Lot unless the Owner shall consent in writing. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

15.3. By the Board. The Board has the right, after the Declarant Control Period, to unilaterally amend this Declaration if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination.

15.4. Master Association Approval. Notwithstanding anything herein to the contrary, any and all amendments must be approved by the Master Association. No amendment shall be effective without Master Association approval.

15.5. Validity. No amendment made during the Declarant Control Period shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

15.6. Effective Date. Unless a later effective date is specified in the amendment, any amendment shall be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment accompanied by a verified certificate of the Secretary of the Association stating that the required number of votes or consents was obtained and that a record of such votes or originals of the consents will be placed on file in the Association's office. In the case of unilateral amendment by Declarant as provided for herein, such amendment shall be immediately

effective upon recording in the office of the Washington County Recorder a copy of such amendment signed and verified by the Declarant.

**ARTICLE 16**  
**ENFORCEMENT**

16.1. **Violations Deemed a Nuisance.** Every violation of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration, any rule, regulation, or resolution, or by law or equity.

16.2. **Legal Action Authorized.** The Association, through the Board, the Declarant, and any Owner, shall have the right to enforce, by any proceeding at law or in equity, all provisions of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration, including all charges and liens now or hereafter imposed pursuant to the authority of this Declaration, against any person, persons, or entities violating or attempting to violate any provision of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration, to restrain or abate or otherwise recover damages for the violation, and against the land to enforce any charge or lien created by this Declaration. In addition to taking legal action, the Declarant and the Board shall have the right to grant variances and stay enforcement proceedings against any Owner on a case-by-case basis when they determine such action is in the best interests of the Association.

16.3. **Fines and Penalties.** The Board may levy a fine or penalty against any Owner who fails to refrain from violating this Declaration or any rule or regulation established pursuant to the authority of this Declaration. Such fine or penalty shall be in an amount that is specifically provided for in a fine schedule adopted, and amended from time to time, by the Board. The Board may establish time frames and requirements for written notice, hearings, and cure periods (in accordance with Utah Code Ann § 57-8a-208 for Owners in violation prior to levying such fine or penalty, which notice shall be at least 48 hours. Any fine or penalty levied by the Board that is not paid within 30 days (such time period shall be stayed should the Governing Documents require any period to cure or for notice and hearing) shall be recoverable by the Association in the same manner as an assessment under Article 4, and shall create a lien in favor of the Association against the Owner's Lot in the same manner as an assessment.

16.4. **Attorney Fees and Costs.** Any fine or penalty levied against an Owner for any violation shall include any attorney fees and costs incurred by the Association with respect to such violation. The prevailing party in any action to enforce this Declaration or any rule or regulation established pursuant to the authority of this Declaration shall be entitled to an award of reasonable attorney fees and costs incurred in such action.

16.5. **Nonexclusive Remedies.** All the remedies set forth in this Declaration are cumulative and not exclusive to any others provided elsewhere in the Governing Documents, the Community Association Act, or by other applicable laws and ordinances.

16.6. **Non-Liability.** The Board, officers, or Members of the Association shall not be liable to any Owner, tenant, member or other individual for a mistake in judgment, or for any negligence or

non-feasance arising in connection with the performance or non-performance of duties under the Governing Documents or the Community Association Act.

16.7. Arbitration; Mediation. The Board may, by rule or resolution, establish procedures for mandatory mediation or arbitration to settle disputes between and among the Association and Owners. Any such rule or resolution shall operate prospectively only.

ARTICLE 17  
GENERAL PROVISIONS

17.1. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

17.2. Disclaimer of Liability. The Association shall not be liable for any failure of services to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage caused by the elements, any Owner, or any other person resulting from electricity, water, snow, or ice which may leak or flow from or over any of the Property or from any pipe, drain, conduit, appliance, or equipment, or any secondary or consequential damages of any type. No diminution, offset, or abatement of any assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property by the Association or from any action taken by the Association to comply with any law, ordinance, or with the order or directive of any governmental authority.

17.3. Dates and Times. In computing any period of time prescribed or allowed by the Governing Documents, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state or federal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a state or federal holiday. The deadline of the last day of the period so computed shall be 5:00 P.M., Mountain Time.

17.4. Interpretive Conflicts. In the event of any conflict between the provisions of any of the Governing Documents, the documents shall control in the following order of authority: (1) the Declaration; (2) the Articles; (3) the Bylaws; and (4) any rule, regulation, or resolution passed pursuant to the authority of the foregoing documents.

17.5. Effect of Master Declaration. Notwithstanding anything in this Declaration to the contrary, the Governing Documents, the Lots, the Association, and all Owners and Members are subject and subordinate to the Master Declaration, the Master Association's articles of incorporation, bylaws, architectural committee guidelines, and rules and regulations adopted by the Master Association.

17.6. Severability. All of the terms and provisions of this Declaration shall be construed together, but if any one of said terms and provisions, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other terms and provisions, or any part thereof,

shall be thereby affected or impaired; and the Declarant, Association and Owners, their successors, heirs and assigns shall be bound by each term and provision of this Declaration, irrespective of the invalidity or enforceability of any other term or provision.

17.7. Duration. The covenants, conditions, restrictions, and easements of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

17.8. Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postage prepaid, to the last known address of the person who is entitled to receive it. The Board may, by resolution, adopt a policy for notification via electronic communication or transmission (such as e-mail) to Owners in lieu of notice by mail. In addition, the Board may require that Owners maintain a current e-mail address with the Board for such purpose. Notwithstanding these provisions, a Lot Owner may, by written demand, require the Association to provide notice to the Lot Owner by mail.

17.9. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

17.10. Waivers. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

17.11. Topical Headings. The topical headings contained in any article, section, or subsection of this Declaration are for convenience only and do not define, limit, or construe the contents of this Declaration or any provision hereof.



**EXHIBIT "A"**

BEGINNING AT THE SOUTHWESTERLY CORNER OF LOT 14, FISH ROCK - PHASE 1 SUBDIVISION AS RECORDED AND ON FILE WITH THE WASHINGTON COUNTY RECORDER'S OFFICE, SAID POINT BEING SOUTH 88°48'45" EAST 2151.371 FEET ALONG THE SECTION LINE AND SOUTH 2342.194 FEET FROM THE NORTHWEST CORNER OF SECTION 26, TOWNSHIP 41 SOUTH RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN, (BASIS OF BEARING BEING SOUTH 88°40'34" EAST BETWEEN THE NORTH QUARTER CORNER OF SECTION 27 AND THE NORTHEAST CORNER OF SECTION 27 TOWNSHIP 41 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN), AND RUNNING THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID LOT 14 AND FISH ROCK - PHASE 1 BOUNDARY AND LINE EXTENDED THE FOLLOWING (2) TWO COURSES: (1) SOUTH 38°54'07" EAST 61.028 FEET; AND (2) SOUTH 81°16'01" EAST 149.146 FEET; THENCE SOUTH 08°43'59" WEST 135.000 FEET; THENCE NORTH 81°16'01" WEST 40.884 FEET; THENCE SOUTH 08°43'59" WEST 95.000 FEET; THENCE SOUTH 81°16'01" EAST 11.820 FEET; THENCE SOUTH 08°43'59" WEST 135.000 FEET; THENCE NORTH 81°16'01" WEST 36.307 FEET; THENCE SOUTH 08°43'59" WEST 173.000 FEET; THENCE NORTH 81°16'01" WEST 447.950 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 733.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 06°05'43", A DISTANCE OF 77.977 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID FISH ROCK - PHASE 1 SUBDIVISION; THENCE ALONG SAID SUBDIVISION BOUNDARY THE FOLLOWING (7) SEVEN COURSES: (1) NORTH 14°49'41" EAST 33.000 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 14°49'41" EAST); (2) RUNNING NORTHWESTERLY ALONG THE ARC OF A 700.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 00°23'08", A DISTANCE OF 4.712 FEET; (3) NORTH 15°12'49" EAST 40.000 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 40°17'31" EAST); (4) RUNNING NORTHERLY ALONG THE ARC OF A 30.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 60°56'12", A DISTANCE OF 31.906 FEET TO A POINT OF COMPOUND CURVATURE; (5) RUNNING NORTHEASTERLY ALONG THE ARC OF A 180.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 42°30'49", A DISTANCE OF 133.560 FEET; (6) NORTH 53°44'32" EAST 489.961 FEET TO A POINT OF CURVATURE; AND (7) RUNNING NORTHEASTERLY ALONG THE ARC OF A 275.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 02°38'40" A DISTANCE OF 12.692 FEET TO THE POINT OF BEGINNING.

CONTAINS 237,349 SQ. FT., (5.449 ACRES)

**CONSENT OF MASTER ASSOCIATION**

The foregoing Neighborhood Declaration has been reviewed in accordance with Section 2.1 of the Master Declaration. The undersigned, being the Master Association governing the Property described in Exhibit "A", which Property is being developed by The Ledges at Snow Canyon LLC, as Declarant, hereby approves the form and consents to the recording of the Neighborhood Declaration for Pocket Mesa at Ledges East (the "Declaration") and further consents to the operation and effect of all covenants, conditions, restrictions and terms of said Declaration as it relates to the Property.

DATED this 9<sup>th</sup> day of January, 2019.

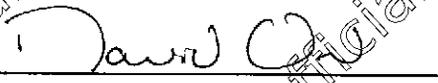
**Ledges East Master Owners Association**  
a Utah non-profit corporation

By 

Its: President

STATE OF UTAH )  
) ss.  
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January, 2019, by Steve Jennings, as the President of Ledges East Master Owners Association.

  
NOTARY PUBLIC  
Address: Santa Clara, UT  
My Commission Expires: 4/23/2022

