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Red Mountain Townhomes Association

Record against the Property  
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After recording mail to:  
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**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS OF RED MOUNTAIN TOWNHOMES  
ASSOCIATION**

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Prepared by:



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Attn: Bruce C. Jenkins  
285 W. Tabernacle, Ste. 301  
St. George, UT 84770

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**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS OF RED MOUNTAIN TOWNHOMES**

THIS ~~IS A~~ **SECOND AMENDED AND RESTATED** DECLARATION of Covenants, Conditions, and Restrictions ~~which establishes a planned unit development known as of~~ Red Mountain Townhomes Owners Association, Inc. This (“Declaration”) ~~was originally made and executed on the 13<sup>th</sup> day of September, 1995 by \_\_\_\_\_ Document 00510344 Book 0396 pages 0739-0768.~~

This approved by the affirmative vote of at least two-thirds (2/3) of the membership votes pursuant to Article 11, Section 11.4 of the Amended and Restated Declaration (defined below), and amends and restates in its entirety and substitutes for the following:

- Amended and Restated Declaration of Covenants, Conditions and Restrictions of Red Mountain Townhomes [hereafter “Declaration”] replaces and supersedes the original Declaration in its entirety, including Phases I & II and any amendments, thereto, originally recorded as “DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF RED MOUNTAIN TOWNHOMES ASSOCIATION, Phases 1,2,3,4. Association, recorded with the Washington County Recorder on November 16, 2010, as Doc. No. 20100038603 (“Amended and Restated Declaration”);
- Amendment to the Declaration of Red Mountain Townhomes, recorded with the Washington County Recorder on May 18, 2017, as Doc. No. 20170020415; and
- any other amendments, supplements, or annexing documents to the covenants, conditions, and restrictions for Red Mountain Townhomes, whether or not recorded with the Washington County Recorder.

This Declaration and the ~~Map~~ **Maps** shall be construed as covenants of equitable servitude; shall run with the Properties and be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, and assigns; and shall inure to the benefit of each Owner thereof.

The Properties are located in Ivins, Washington County, Utah, and are described in Exhibit ~~“A”~~ of this Declaration.

TOGETHER WITH ALL IMPROVEMENTS & APPURTENANCES THEREUNTO BELONGING.

The Community Association Act, Utah Code § 57-8a-101, et. seq. (the “Act”), as amended from time to time, shall supplement this Declaration. If an amendment to this Declaration adopts a specific section of the Act, such amendment shall grant a right, power, and privilege permitted by such section of the Act, together with all correlative obligations, liabilities and restrictions of that section. The remedies in the Act and this Declaration -- provided by law or in equity -- are cumulative and not mutually exclusive.

## ARTICLE 1 – DEFINITIONS

The following definitions control in this Declaration. ~~These terms, though defined, are generally not capitalized in the Declaration~~ The definitions in this Declaration are supplemented by the definitions in the Act. In the event of any conflict, the more specific and restrictive definition shall apply.

Section 1.1 ~~Section 1.1.~~ Declaration means this instrument, and any amendments.

Section 1.2 ~~Section 1.2.~~ Plat or Map means the subdivision ~~plat~~Plats recorded ~~herewith with the Washington County Recorder~~ entitled “Red Mountain Townhomes Association”– Phase I”, “Red Mountain Townhomes – Phase II”, “Red Mountain Townhomes – Phase III”, and “Red Mountain Townhomes – Phase IV”, as the same may hereafter be modified, amended, or supplemented.

Section 1.3 ~~Section 1.3.~~ Property or Properties means that certain real property ~~hereinafter~~ described, in Exhibit “A” ~~and such additions thereto as may hereafter be subjected to this Declaration.~~

Section 1.4 ~~Section 1.4.~~ Common Area means that portion of Property owned by the Association, shown on the Plat as dedicated to the common use and enjoyment of the Owners, including all improvements other than utility lines now or hereafter constructed or located thereon.

Section 1.5 ~~Section 1.5.~~ Limited Common Area means that portion of Property owned by the Association, shown on the Plat as dedicated to the exclusive use and enjoyment of the Owner of the Lot to which such Limited Common Area is adjacent and/or appurtenant. Limited Common Area is subject to rights of the Association set forth in this Declaration.

Section 1.6 ~~Section 1.6.~~ 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 and Limited Common Areas.

Section 1.7 ~~Section 1.7.~~ Living Unit means a single-family dwelling, with or without walls or roofs in common with other single-family ~~dwelling lots~~dwellings. When the term “Living 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 Living Unit walls. The term “single family dwelling” when used in this Declaration shall mean a group of not more than four ~~{(4)}~~ persons in a two ~~{(2)}~~ bedroom Living Unit or up to six ~~{(6)}~~ persons in a three ~~{(3)}~~ bedroom Living Unit, who are directly related either as spouses or significant ~~other~~others, parent and child, grandparent, grandchild, niece, nephew, or as siblings. In no event shall a single-family dwelling exceed six ~~{(6)}~~ individuals. A medically required, state licensed caregiver need not meet the family qualifications stated herein.

Section 1.8 ~~Section 1.8.~~ Owner means the entity, person, or group of persons owning fee simple title to any Lot which is within the Properties. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one "Owner."

Section 1.9 ~~Section 1.9.~~ Association means Red Mountain ~~Townhome~~Townhomes Association, a Utah nonprofit corporation, its successors and assigns.

Section 1.10 ~~Section 1.10.~~ Member means every person or entity who holds membership in the Association. Every Member is an Owner, and every Owner is a Member.

Section 1.11 ~~Section 1.11.~~ TrusteesBoard of Directors or Board means the governing body of the Association.

Section 1.12 ~~Section 1.12.~~ Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary".

Section 1.13 ~~Section 1.13.~~ Fines mean a punitive monetary amount levied against an Owner and Lot for violations of this ~~Amended and Restated~~ Declaration, the Bylaws, the Rules and Regulations ~~of the Association~~ and applicable Architectural Guidelines. Said Fines shall be collectable as assessments pursuant to Article 4 herein.

~~Section 1.14 Residence "Residence" shall hereinafter mean and refer to single family home or other similar single family residential unit constructed upon a Lot for the permanent occupancy of an Owner and his or her family. Note: See Section 1.7 "Living Unit"~~

## ~~Section 1.14~~ ARTICLE 2 – PROPERTY RIGHTS

Section 2.1 ~~Section 2.1.~~ Title to the Common Area. The Declarant ~~has~~ conveyed fee simple title to the Common Area and Limited Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot ~~but~~and subject to ~~this Declaration, and covenants, conditions, restrictions,~~ easements, and rights-of-way or record. In accepting the deed, the Association ~~will covenant~~covenants to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and condition at all times and to operate the Common Area as its own expense in accordance with high standards.

Section 2.2 ~~Section 2.2.~~ Owners' Easements of Enjoyment. Every Owner has a right and easement of use and enjoyment in and to the Common Area. This easement is appurtenant to and passes with the title to every Lot, subject to:

(a) ~~{a}~~ The right of the Association to limit the number of guests of Members using the Common Area.

(b) ~~{b}~~ The right of the Association to suspend the voting rights and/or common utility service of a Member for any period during which any assessment or portion thereof against his Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published Rules and Regulations.

(c) ~~[e]~~—The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities by a similar Association in consideration for use of the Common Areas and facilities of the other Association, or for cash consideration;

(d) ~~[d]~~—The right of the Association with the approval of sixty-seven percent (67%) 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.

(e) ~~[e]~~—The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.

(f) ~~[f]~~—The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

(g) ~~[g]~~—The terms and conditions of this Declaration.

(h) ~~[h]~~—The right of the Association through its ~~Trustees~~Board, to adopt Rules and Regulations concerning use of the Common Area.

Section 2.3 ~~Section 2.3.~~—Limited Common Area. A Lot Owner is entitled to the exclusive use of the Limited Common Area adjacent and appurtenant thereto, if any, and to exclusive use of the parking area, if any, designated with his Lot number on the Plat. The Association, through its ~~Trustees~~Board, may adopt Rules and Regulations concerning use of the Limited Common Area. Limited Common Area is subject to the rights of the Association set forth in this Declaration.

Section 2.4 ~~Section 2.4.~~—Delegation of Use. An Owner is deemed to delegate his right of enjoyment to the Common Area and facilities to the Members of his family, his tenants, or contract purchasers who reside on the Property. No one who is non-resident shall have any such delegable right of enjoyment.

Section 2.5 ~~Section 2.5.~~—Rules.  
The Board ~~of Trustees~~ shall have the authority to promulgate, adopt, amend, cancel, limit, create exceptions to, expand, or enforce Rules and Regulations and design criteria of the Association that are not inconsistent with this Declaration or the Act and further shall have the authority to levy fines and access penalties for the governance of the Properties, and persons within the Properties. These Rules ~~of the Association~~ shall be compiled and copies shall be made available by the Board for inspection and copying by the ~~Trustees.~~Members. Except in the case of imminent risk of harm to a Common Area, a Limited Common Area, an Owner, a Lot or a Dwelling Unit, the Board shall give at least fifteen (15) days advance notice of the date and time the Board will meet to consider adopting, amending, canceling, limiting, creating exceptions to, expanding or changing the procedures for enforcing Rules and design criteria. The Board may provide in the notice a copy of the particulars of the rule or design criteria under consideration. A rule or design criteria adopted by the Board is only disapproved if Member action to disapprove the rule or design criteria is taken in accordance with the limitations under Section 217 of the Act.

Section 2.6 ~~Section 2.6.~~—Lot. Each Lot is owned in fee simple by the Owner. However, area within the surveyed Lot boundaries, but outside the townhome 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 townhome is to allow flexibility in the original townhome 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. An Owner may construct appurtenant structures and personal landscaping outside the boundaries of the townhome and within the rear area of the surveyed boundaries of the Lot, subject to approval of the Architectural Control Committee, as outlined in Article 6 herein.

### ARTICLE 3 – MEMBERSHIP AND VOTING RIGHTS

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

~~Section 3.2~~ Voting Rights. The Association has one (1) class of voting membership:  
Section 3.2 All Members are entitled to one (1) vote for each Lot owned. When more than one (1) 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 (1) vote be cast with respect to any Lot. A vote cast at any Association meeting by any such co-owners, whether in person, by ballot, 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.

### ARTICLE 4 – FINANCES AND OPERATIONS

Section 4.1 ~~Section 4.1.~~ Creation of the Lien and Personal Obligation of Assessments. Each subsequent owner of any Lot, by acceptance of deed ~~thereforetherefor~~, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; ~~-(2)~~ special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) reinvestment fees; (4) any other amount or assessment levied or charged by the Association ~~or Board of Trustees~~ pursuant to this Declaration, and ~~(45)~~ interest, costs of collection and a reasonable attorney’s fee, as hereinafter provided whether or not a lawsuit for collections is initiated. All such amounts shall be a charge on the land and shall be a continuing lien upon the propertyLot against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the Owner of such propertyLot at the time when the assessment fell due. Successors in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 4.2 ~~Section 4.2.~~ Purpose of Assessments. The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety and

welfare of the residents of the Properties and (b) for the improvement and maintenance of Properties, services and facilities devoted to this purpose. The assessments must 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 and Limited Common Areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance, and replacement of those Common and Limited Common Areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the TrusteesBoard shall determine necessary to meet the primary purposes of the Association . ~~The trustees shall conduct a Reserve Fund Analysis as required Utah State code, Pursuant to Utah's Community Association Act, 57-8a-211. Reserve analysis—Reserve fund and as may be mended from time to time.~~ The assessments may provide, at the discretion of the TrusteesBoard, for the payment of other charges including, without limitation, maintenance, management, utility, cable television, trash collection, sewer and water charges and at the option of the Association, of the homesLiving Units situated upon the Properties and of the unit and outside walls and roof of Living Units and street; including, but not limited to, the replacement, and additions thereto, and for the cost of labor, equipment, materials, utilities, property taxes, management, and supervision thereof.

Section 4.3 ~~Section 4.3.~~ Maximum Annual Assessment.

(a) ~~[a]~~ The maximum annual assessment may be increased each year by ten percent ~~{(10%)}%~~ above the assessment for the previous year, without a vote of the membership.

(b) ~~[b]~~ The Association may change the basis and maximum of the assessments fixed by this Section 4.3 prospectively for any annual period provided that any such change shall have the assent of fifty percent (50%) of the votes of the Members, voting in person, by ballot, or by proxy, at a meeting duly called for this purpose.

The actual general assessment need not increase annually. Any year in which the maximum annual assessment ~~{ten percent {(10%)}%}~~ was not applied may not be revisited in order to provide an increase to the current or future year's assessments. The Board shall set the actual general annual assessment on an annual basis. Notices shall be given to each Owner as provided in ~~SectionSections~~ 4.6 and 11.35, and as further outlined in the Bylaws. The Board must set the actual general assessment to be an amount at or less than the maximum annual assessment.

Section 4.4 ~~Section 4.4.~~ Special Assessments for Capital Improvements. In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of Common or Limited Common Area structures, fixtures and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes of the Members authorized to vote, in person, by ballot, or by proxy, at a meeting duly called for this purpose.

Section 4.5 ~~Section 4.5.~~ Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of

repairing and restoring the damage or disruption resulting to streets or other Common or Limited Common Areas from the activities of the City of Ivins in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise, is in the City up to and including the meters for individual Living Units, and that they are installed and shall be maintained to City specifications.

Section 4.6 ~~Section 4.6~~ Notice and Quorum for Any Action Authorized under Sections 34.4 and 4.5. Written notice of any meeting of Members called for the purpose of taking any action authorized under ~~Section 4~~Sections 4.4 and 4.5 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, present in person, by ballot, or of proxies by proxy, entitled to cast fifty percent ~~{(50%)}%~~ of all the votes of the membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.7 ~~Section 4.7~~ Uniform Rate of Assessment: Periodic Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots~~---~~. ~~Annual: Special, special,~~ and additional assessments may be collected on a monthly or quarterly basis, as the ~~Trustees determine~~Board determines.

Section 4.8 ~~Section 4.8~~ Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall ~~commence to accrue~~be due in twelve equal installment payments on the first day of ~~the each~~ month ~~following conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.~~

At least thirty (30) days prior to the commencement of each new assessment period, the ~~Trustees~~Board shall send or cause to be sent a written notice of the annual assessment to each Owner subject thereto. This notice shall not be a pre-requisite to validity of the assessment.

In the absence of a determination by the ~~Trustees~~Board as to the amount of said assessment, the annual assessment shall be an amount equal to one hundred percent (100%%) of the maximum annual assessment determined as provided above. The assessment due dates shall be established by the ~~Trustees~~Board. The ~~Trustees~~Board may provide for the payment of annual and special assessments in equal installments throughout the assessment year.

The ~~Trustees~~Board shall prepare a roster of the ~~properties~~Lots 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.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

Such certificates, 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.

Section 4.9 — ~~Section 4.9~~ Effect of Non-payment of Assessment – Remedies of the Association. Any assessment or fine or installment thereof not paid within thirty (30) days after the due date ~~thereforetherefor~~ 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 TrusteesBoard shall determine appropriate) until paid. In addition, the TrusteesBoard may assess a late fee for each delinquent installment which shall not exceed ten percent (10%) of the installment.

The trusteesBoard may, in the name of the Association, (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the property 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, and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the Lot 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 of the reasonable rental without regard to the value of the other security. Utah Code §§ 57-8a-204 and 205, as may be amended from time to time is hereby incorporated into this Declaration in order to facilitate the collections of assessments. The Association shall have the right to collect assessments through a lawsuit, judicial foreclosure, non-judicial foreclosure or other means as provided in Sections 301 through 311 of the Act. Such remedies shall be cumulative and not exclusive, except that fines may not be collected by non-judicial foreclosure.

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 Association and each Lot Owner hereby conveys and warrants, pursuant to Sections 212 and 302 of the Act, and Utah Code § 57-1-20, to attorney Bruce C. Jenkins, or any other attorney that the Association engages to act on its behalf to substitute for Bruce C. Jenkins, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of this Declaration.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 4.10 — ~~Section 4.10~~ Subordination for the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender or insured by the Federal Housing Administration or the Veterans Administration if the mortgage was recorded prior to the date the assessment became due. 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 a Lot or Owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

~~Section 4.11 Books, Records and Audit The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by lot 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. A lot 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.~~

~~Section 4.11 Reserve Analysis/Reserve Fund. The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years and shall review and, if necessary, update a previously prepared reserve analysis every three (3) years. The Board may conduct the reserve analysis by itself or may engage a reliable person or organization to conduct the reserve analysis. The Board shall annually provide Owners a summary of the most recent reserve analysis or update and provide a complete copy of the reserve analysis or update to an Owner upon request. In formulating the budget each year, the Board shall include a reserve line item in an amount required by the governing documents, or, if the governing documents do not provide for an amount, the Board shall include an amount it determines, based on the reserve analysis, to be prudent. Unless a majority of the Association Owners vote to approve the use of reserve fund money for that purpose, the Board may not use money in a reserve fund: (i) for daily maintenance expenses; or (ii) for any purpose other than the purpose for which the reserve fund was established. The Association shall maintain a reserve fund separate from other Association funds.~~

~~Section 4.12 Budget. At least annually the Board shall prepare and adopt a budget for the Association and the Board shall present the budget at a meeting of the Members. A budget presented by the Board is only disapproved if Member action to disapprove the budget is taken in accordance with the limitations under Section 215 of the Act.~~

~~Section 4.13 Delinquent Owner. As used in this section, "Delinquent Owner" means a Lot Owner who fails to pay an assessment when due.~~

~~4.13.1 The Board may terminate a Delinquent Owner's right:~~

~~(a) to receive a utility service for which the Owner pays as a common expense; or~~

~~(b) of access to and use of recreational facilities.~~

~~4.13.2 (a) Before terminating a utility service or right of access to and use of recreational facilities under Subsection 4.13.1 the Manager or Board shall give the Delinquent Owner notice. Such notice shall state:~~

~~(i) that the Association will terminate the Owner's utility service or right of access to and use of recreational facilities, or both, if the Association does not receive payment of the assessment within fourteen (14) calendar days;~~

~~(ii) the amount of the assessment due, including any interest or late payment fee; and~~

- (iii) the Owner's right to request a hearing under Subsection 4.13.3.
- (b) A notice under Subsection 4.13.2(a) may include the estimated cost to reinstate a utility service if service is terminated.
- 4.13.3 (a) The Delinquent Owner may submit a written request to the Board for an informal hearing to dispute the assessment.
- (b) A request under Subsection 4.13.3(a) shall be submitted within fourteen (14) days after the date the Delinquent Owner receives the notice under Subsection 4.13.2(a).
- 4.13.4 The Board shall conduct an informal hearing requested under Subsection 4.13.3(a) in accordance with the hearing procedures of the Association.
- 4.13.5 If the Delinquent Owner requests a hearing, the Association may not terminate a utility service or right of access to and use of recreational facilities until after the Board:
- (a) conducts the hearing; and
- (b) enters a final decision.
- 4.13.6 If the Association terminates a utility service or a right of access to and use of recreational facilities, the Association shall take immediate action to reinstate the service or right following the Owner's payment of the assessment, including any interest and late payment fee.
- 4.13.7 The Association may:
- (a) levy an assessment against the Delinquent Owner for the cost associated with reinstating a utility service that the Association terminates as provided in this section; and
- (b) demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in a notice under Subsection 4.13.2(b).

#### Section 4.14 Tenant Payment of Assessments.

(a) The Board may require a tenant under a lease with a Lot Owner to pay the Association all future lease payments due to the Lot Owner if the Lot Owner fails to pay an assessment for a period of more than sixty (60) days after the assessment is due and payable, beginning with the next monthly or periodic payment due from the tenant and until the Association is paid the amount owing. Before requiring a tenant to pay lease payments to the Association, the Association's manager or Board shall give the Lot Owner notice, which notice shall state: (i) the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees; (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of lease payments; and (iii) that the Association intends to demand payment of future lease payments from the Lot Owner's tenant if the Lot Owner does not pay the amount owing within fifteen (15) days.

(b) If a Lot Owner fails to pay the amount owing within fifteen (15) days after the Association's manager or Board gives the Lot Owner notice, the Association's manager or Board may exercise the Association's rights by delivering a written notice to the tenant. The notice to the tenant shall state that: (i) due to the Lot Owner's failure to pay an assessment within the required time, the Board has notified the Lot Owner of the Board's intent to collect all lease payments until the amount owing is paid; (ii) the law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing is paid; and (iii) the tenant's payment of lease payments to the Association does not constitute a default under the terms of the lease with the Lot Owner. The manager or Board shall mail a copy of this notice to the Lot Owner.



(c) A tenant to whom notice is given shall pay to the Association all future lease payments as they become due and owing to the Lot Owner: (i) beginning with the next monthly or other periodic payment after the notice is delivered to the tenant; and (ii) until the Association notifies the tenant under Subsection 4.14(a) that the amount owing is paid. A Lot Owner shall credit each payment that the tenant makes to the Association under this section against any obligation that the tenant owes to the Owner as though the tenant made the payment to the Owner; and may not initiate a suit or other action against a tenant for failure to make a lease payment that the tenant pays to an Association as required under this section.

(d) Within five (5) business days after the amount owing is paid, the Association's manager or Board shall notify the tenant in writing that the tenant is no longer required to pay future lease payments to the Association. The manager or Board shall mail a copy of this notification to the Lot Owner. The Association shall deposit money paid to the Association under this section in a separate account and disburse that money to the Association until the amount owing is paid; and any cost of administration, not to exceed Twenty-Five Dollars (\$25.00), is paid. The Association shall, within five (5) business days after the amount owing is paid, pay to the Lot Owner any remaining balance.

Section 4.15 Reinvestment Fee Assessment. In addition to all other assessments and upon the conveyance of a Lot there shall be one (1) Reinvestment Fee in the amount of \$250.00 charged to the buyer or seller, as the buyer and seller may determine, comprised of one or more of the following charges:

- (a) an assessment determined pursuant to resolution of the Board and charged for:
  - (i) common planning, facilities, and infrastructure;
  - (ii) obligations arising from an environmental covenant;
  - (iii) community programming;
  - (iv) recreational facilities and amenities; or
  - (v) Association expenses as provided for in Utah Code § 57-1-46(1)(a).

(b) No reinvestment assessment shall exceed one-half percent (0.5%) of the fair market value of the Lot, plus all improvements. When the seller is a financial institution, the reinvestment assessment shall be limited to the costs directly related to the transfer, not to exceed Two Hundred and Fifty Dollars (\$250.00). The Association may assign the charges in 4.15(b) directly to the Association's manager.

(c) A reinvestment fee covenant recorded on or after March 16, 2010, may not be enforced upon: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; or (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution.

## ARTICLE 5 – INSURANCE

Section 5.1 — ~~Section 5.1.~~ Casualty Insurance on Insurable Common Area. The ~~Trustees Association~~ 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.

Section 5.1.1 Lots and Living Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain and fire, liability, extended coverage, or other insurance covering any Lot of Living Unit and acts and events occurring thereon. Accordingly, each Owner shall secure and keep in force at all times fires and extended coverage insurance which shall be equal to or greater than commonly required by private institutional mortgage investors in the area in which the mortgaged premises are located. The policy shall provide as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of: ~~{(i)}~~ compensation equal to the full amount of damage or ~~loss~~, or ~~{(ii)}~~ compensation to the first ~~Mortgage~~mortgagee under the mortgage equal to the full amount of the unpaid principal balance of the mortgage loan. However, the Board may choose to obtain a master policy of insurance. If the Board elects ~~so~~ to do so, such policy shall be in an amount equal to full replacement value of all Living Units on the Lots with a co-insurance clause and each Owner of such Lots shall be designated as additional insureds. The cost of such insurance shall be part of the assessment for such Lot and may vary by Lot if the Board shall find that the cost of insuring a Living Unit under the blanket policy is materially different.

Section 5.1.2 Unacceptable Policies. Policies are unacceptable where: ~~{(i)}~~ under the terms of the carrier's charter, bylaws, or policy, contributions or assessments may be made against the Lot Owner or mortgagee or mortgagee's designee; or [ii] by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by carrier's board of directors, policyholders, or members; or ~~{(iii)}~~ the policy includes any limiting clauses ~~{other than insurance conditions}~~ which could prevent the Lot Owner, mortgagee or mortgagee's designee from ~~collection~~collecting insurance proceeds.

Section 5.2 ~~Section 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. 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 ~~lots~~Lot 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 Lot Owner.



In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the ~~Trustees are~~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.

Section 5.3 ~~Section 5.3. Liability Insurance~~the Trustees. The Board shall obtain a comprehensive policy of public liability insurance covering all of the Common and Limited Common ~~property~~Area for at least ~~\$One Million Dollars (\$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 act of the Association or other Owners.

Section 5.4 ~~Section 5.4 Fidelity Insurance~~. The ~~Trustees~~Board may elect to obtain fidelity coverage against dishonest acts on the part of managers, ~~Trustees~~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 ~~Trustees~~Board shall seek a policy which shall (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of ~~{(i)}~~ three ~~(3)~~ 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.”

Section 5.5 ~~Section 5.5 Annual Review of Policies~~. All insurance policies shall be reviewed at least annually by the ~~Trustees~~Board 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 ~~damages~~damaged or destroyed.

## ARTICLE 6 – ARCHITECTURAL CONTROL COMMITTEE

No structure, building, fence, wall or addition, or extension ~~to or~~ expansion of any of the foregoing shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition or change or alteration to any Lot or ~~home~~Living Unit be made until the plans and specifications showing the nature, kind, shape, height, materials, colors, and location of the same ~~shall~~ have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the ~~Trustees~~Board or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the ~~Trustees~~Board. In the event ~~said Trustees~~the Board, or ~~theirs~~ designated committee ~~fail~~fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this Article 6 will be deemed to have been made.

The Architectural Control Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to ~~request~~requests made pursuant to this Article 6.

The Association may charge a plan review fee that is equivalent to the cost of reviewing the plans. As used in this section, "plans" mean any plans for the construction or improvement of a Lot which are required to be approved by the Association before the construction or improvement may occur.

## ARTICLE 7 – EXTERIOR MAINTENANCE

Section 7.1 ~~Section 7.1.~~ Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair. The Association shall maintain the landscape and irrigation system for the front yard and side yard of each ~~unit~~ Living Unit (whether or not designated as Limited Common Area ~~+~~ back to approximately the mid-point of the Living Unit or the fenced area, if any~~+~~).

Section 7.1.1. Operation and Maintenance by Unit-Owner. The ~~Unit~~ Owner shall provide for maintenance and repair of the entire Living Unit, interior and exterior ~~(including resurfacing of roofs and repainting including replacement of glass, party walls, concrete drive, walkways, and all utilities~~ utility lines that service the ~~unit~~ Living Unit).

Notwithstanding ~~to the contrary~~ foregoing, any and all damage to the front yard or side yard ~~(back to approximately the mid-point of the Living Unit or the fenced area, if any)~~ including without limitation damage to the lawn, trees, shrubs, and other plants, caused as a result of the utilities to a Living Unit and Lot being shut off through no fault of the Association, shall be the joint and several obligation of the Owner of the Living Unit at the time the damage occurs and the transferee of such Living Unit ~~(not including the transfer of the Lot to a first mortgagee through foreclosure)~~. THE ASSOCIATION SHALL HAVE THE RIGHT TO REPAIR ANY SUCH DAMAGE AND RECORD A LIEN FOR SUCH COSTS AGAINST THE LOT IF THE OWNER OR TRANSFEREE HAS NOT PAID THE COSTS WITHIN FIFTEEN ~~(15)~~ DAYS AFTER RECEIVING WRITTEN NOTICE.

Section 7.1.2. Party Walls General Rules of Law to Apply. Party walls which separate the Lots have been or may have been constructed by the Declarant. Said walls are built as a part of the original construction upon the Properties and may not be on precise Lot lines. The walls shall constitute party walls between Lots, and shall constitute the effective boundaries of area available for use of each Owner. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property due to negligence or willful acts or omissions shall apply thereto.

Section 7.1.3. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. The ~~Trustees~~ Board may, however, in the default of an Owner to perform maintenance which is the Owner's responsibility, and after a majority vote of the ~~Trustees~~ Board, 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)~~, the cost of such maintenance shall be assessed and become a lien against the Lot and is the personal obligation of the Owner.

Section 7.1.4. Perimeter Walls. The cost of repair and maintenance of perimeter walls shall be borne by the Association and the ~~unit~~ Owner whose Lot is adjacent or appurtenant to said perimeter wall. These costs shall be assessed equally between the Lot Owner and the Association. Walls and/or fences surrounding the park area are for the use of the Association exclusively.

Section 7.2 ~~Section 7.2.~~ Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this Article 7, 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.

Section 7.3 ~~Section 7.3.~~ Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a Lot outside the walls of the townhome, and the Limited Common Areas adjacent and appurtenant to the townhomes may be altered by Rule of the Association.

## ARTICLE 8 – USE RESTRICTIONS

Section 8.1 ~~Section 8.1.~~ General Use Restrictions. All of the Properties which are subject to this Declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the common property. All buildings or structures erected in the Properties shall be of new construction and no buildings or structures shall be removed from other locations to the Properties. After the initial construction on a Lot, no subsequent building or structure dissimilar to that initially constructed 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.

No part of the Property shall be used for any commercial, manufacturing, mercantile, storing, vending, or other such non-residential purposes.

Section 8.2 ~~Section 8.2.~~ Signs; Commercial Activity. Except for one ~~(1)~~ “For Rent” or “For Sale” sign of not more than six (6) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot or any portion of the Properties. No commercial activities of any kind ~~whatever~~ whatsoever shall be conducted in any building or on any portion of the Properties.

Section 8.3 ~~Section 8.3.~~ Quiet Enjoyment. No noxious or offensive activity shall be carried on upon any part of the Properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, 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.

Section 8.4 ~~Section 8.4.~~ Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any of said Lots, except one (1) dog, and/or one (1) cat ~~or~~ for other household pets, two (2) or less in total number, may be kept provided that they are not kept, bred, or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or

fowl may be kept on the Property which result in an annoyance or are obnoxious, by noise, smell, or otherwise, to Lot Owners. All pets must be kept in the Lots or on a hand-held leash when in the Common Areas. This provision may be made more restrictive by rule of the Association.

Section 8.5 ~~Section 8.5.~~ Use of Common Area. Except for the rights of ingress and egress, Owners are hereby prohibited and restricted from using any of said Common Area, other than as permitted in this Declaration ~~of covenants~~ or as may be allowed by the ~~Trustees~~Board. It is expressly acknowledged and agreed by all parties concerned that this restriction is for mutual benefit of all Owners of Lots in the Properties and is necessary for the protection of the interests of all said Owners in and to the Common Area.

Section 8.6 ~~Section 8.6.~~ Parking. No motor vehicle which is inoperable (inoperable may be further defined by Association rule) shall be allowed within the Properties, and any motor vehicle which remains parked over ~~seventy-two (72)~~ hours shall be subject to removal by the Association. The offending vehicle will be towed, and the cost assessed to the Owner as any other assessment under this Declaration. If parking spaces are designated on the Plat with numbers corresponding to Lot numbers, each such space is for the exclusive use of the Lot Owner with corresponding number. If parking areas are not designated on the Plat with Lot numbers, the ~~Trustees~~Board may assign vehicle parking space for each Lot. Parking spaces within the Properties shall be used for parking of motor vehicles actually used by the Owner or his immediate family or guests for personal use and not for commercial use, and for guest parking. Recreational vehicles, boats, travel trailers, and similar property may not be parked within the Properties unless permitted by rule of the Association.

Section 8.7 ~~Section 8.7.~~ Planting and Gardening. No planting or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon any ~~property~~Lot except such as are installed in accordance with and approved by the ~~Trustees~~Board.

Section 8.8 ~~Section 8.8.~~ External Apparatus. No Lot 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 or any part thereof, or on the outside of windows or doors, without the prior written consent of the ~~Trustees~~Board.

Section 8.9 ~~Section 8.9.~~ Exterior Television or Other Antennas. No exterior radio or other antennas, except one ~~(1)~~ television antenna which shall not exceed four ~~(4)~~ feet in height, per Lot, shall be placed, allowed, or maintained upon any Lot or upon any structure or portion of the improvements situated and located upon the Properties without prior written approval of the ~~Trustees~~Board. Said approval to be in compliance with current Federal Communication Commission (FCC) standards.

Section 8.10 ~~Section 8.10.~~ Garbage Removal. All rubbish, trash, and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

Section 8.11 ~~Section 8.11.~~ 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 properties of any Lot. 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 Properties or any Lot.

Section 8.12 ~~Section 8.12. Interior Utilities.~~ All utilities, fixtures, and equipment installed within a Lot, 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.

The Association shall pay for all utility service furnished to each Lot except telephone and any other services, which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

Section 8.13 ~~Section 8.13. Leases.~~ ~~As of May 18, 2017,~~ Lot Owners shall not be permitted to lease their Lots ~~upon the adopt of this amendment~~ unless “grandfathered” as a permissible rental until such time as the grandfathering expires as described below.

As such, it is the objective and requirements that all Living Units shall ultimately be Owner-occupied as the grandfathering privilege expires unless an exemption is required by Utah law.

Any lease existing ~~lease as of May 18, 2017,~~ that ~~at the time of recording of this Declaration has been was~~ approved by the HOA Association is hereby grandfathered as stated herein. Grandfathering shall cease upon transfer of title to the property Lot.

A transfer occurs when one or more of the following occur: (a) the conveyance, sale, or other transfer of a Lot by deed; (b) the granting of a life estate in the Lot; or (c) if the Lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than seventy-five (75%%) of the business entity’s share, stock, membership interests, or partnership interests in a twelve (12) month period. Grandfathering status also ends when (1) the Lot Owner occupies the Lot (being rented at the time of this amendment) or (2) ~~or~~ an officer, owner, member, trustee, beneficiary, director, or ~~personal person~~ holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Lot, occupies the Lot.

The following are exempted for the rental restriction stated herein: (a) a Lot Owner in the military for the period of the Lot Owner’s deployment; (b) a Lot occupied by a Lot Owner’s parent, child, or sibling; (c) a Lot Owner whose employer has relocated the Lot Owner for no less than two (2) years; or (d) a Lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for: (1) the estate of a current resident of the Lot; or (2) the parent, child or sibling of the current resident of the Lot.

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, the Articles of Incorporation, Bylaws, and Rules and Regulations ~~of the Association~~ and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. In the event Owner fails to remedy the default under their lease agreement, the Association is hereby appointed agent of the Owner and may initiate eviction proceedings against Tenant.

Any lease or rental agreement shall be in writing and must be presented to the Board ~~of Trustees~~. All rental or lease agreements must be for a minimum period of twelve (12) months. No dormitory type rentals are permitted. No Living Unit shall be rented, ~~lease~~leased, or utilized for transient or hotel purposes, commercial, or vacation time-share. Further, no Owner shall lease or rent less than his or her entire Living Unit. The Living Units may not be divided into a ~~small~~smaller rental space than the entire Living Unit space. A renter or lessee may not sublet or allow a third party to occupy the Living Unit. The Association must be notified, ~~thru~~ through its secretary and/or property management agent, forty-eight (48) hours prior to any move-in or move-out. The terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws, Board Policy Letters and Rules and Regulations ~~of the Association~~.

An Owner of a ~~townhome~~Living Unit that is being leased must provide a five hundred (\$500) security deposit to the Association. The deposit is refundable in whole or in portion, after deduction of any assessments, fines, and/or other charges. If the lessee moves out within the first twelve (12) months, the entire deposit is forfeited. A copy of the lease and the deposit must be delivered to the Association before the lessee can occupy the ~~townhome~~Living Unit being leased.

## ~~ARTICLE 9~~ AUTHORITY OF TRUSTEES

~~Section 9.1 Resignation and Removal. Any officer may resign at any time delivering a written resignation to the President of the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, for or without cause and a successor may be elected at a special meeting of the Board called for such purpose.~~

~~Section 9.2. Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special Board meeting. Any person filling such vacancies shall serve until the next annual meeting unless provided for differently in the Bylaws.~~

### ~~Section 9.3~~

~~Section 8.14 Display of the Flag. The Association may not prohibit an Owner from displaying the United States flag inside a dwelling or on the Owner's Lot or Limited Common Area appurtenant to the Owner's Lot if the display complies with United States Code, Title 4, Chapter 1. The Association may, by rule of the Board, restrict the display of a United States flag on the Common Area.~~

Section 8.15 Accessory Dwelling Unit. For an accessory dwelling unit ("ADU") approved by the local governmental authority pursuant to Utah Code Sections 10-9a-530 and 17-27a-526, the Owner shall provide to the Association, upon request and as a condition to maintain an ADU within the existing footprint of the Owner's Dwelling Unit, the following information:

- a. Copies of ADU permits from local governmental authority;
- b. Proof of additional parking required by the local governmental authority;



c. Copies of business licenses for operating an ADU;

d. Copies of liens, if any, held on an ADU by the local governmental authority; and

e. Verification of the minimum lot size required for an ADU, if any, by ordinance of the local governmental authority.

## ARTICLE 9 – AUTHORITY OF BOARD

Section 9.1 Reserved.

Section 9.2 Reserved.

~~Section 9.1~~Section 9.3Fines. The Board shall have the right to levy fines against Owners and Lots for violation of the provisions of this Declaration, the ~~By-Laws, Supplementary Restrictions~~Bylaws, or Rules and Regulations. The amount of the fines shall be determined by the Board and shall be published in a schedule of fines. The Board shall have the right to amend schedule of fines from time to time as it sees fit. Fines shall be considered an assessment against the Lot and shall be collectible as an assessment pursuant to Article 4 herein. In addition to the levy of fines, the Board may also elect to pursue other enforcement remedies and/or damages permitted under the governing documents.

~~Section 9.2~~Section 9.4~~Section 9.4~~Notice and Hearing. In the event of a claimed violation of ~~the~~this Declaration, ~~By-Laws~~Bylaws, or administrative Rules and Regulations as they may be adopted by the ~~Trustees~~Board from time to time governing the Association an Owner or resident shall be entitled to the following:

(a) ~~{a}~~Notice. Written notice specifying the nature of the alleged violation ~~{(providing any other appropriate information)}~~ and stating the time, date, and place at which the Owner or resident will have an opportunity to be heard. Notice shall be given at least fifteen ~~{(15)}~~ days prior to and no longer than thirty ~~{(30)}~~ days before the date set for the hearing. The notice may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered four ~~{(4)}~~ business days after it has been deposited with the U.S. Postal Service, regular mail, postage prepaid, addressed to the Owner or resident at the address given by the Member to the ~~Trustees~~Board for the purpose of service of notice, or to the address of the Owner's or resident's Living Unit if no other address has been provided. The address of an Owner or resident for the purposes of notice may be changed from time to time by delivery of written notice to the ~~Trustees~~Board.

(b) ~~{b}~~Costs and Assessments. If the violation, or the failure to correct or remedy a violation results, the Board ~~of Trustees~~ may levy fines as indicated in Section 9.3.

(c) ~~{c}~~Final Determination. After the hearing has taken place, the ~~Trustees~~Board shall determine whether a violation has occurred and, if so, the ~~Trustees~~Board may: ~~{(1)}~~ levy an Assessment or impose conditions which shall become effective not less than five ~~{(5)}~~ days after the date of the hearing; ~~{(2)}~~ take such other action as it may deem appropriate; ~~and~~ {(3)} suspend

the voting rights of Owner ~~shall be suspended~~ during any period of delinquency of assessments. The determination of the ~~Trustees~~Board shall be final.

Section 9.5 Action of the Association. Except as limited in this Declaration or the Bylaws, the Board acts in all instances on behalf of the Association.

Section 9.6 Association Access. The Board, or its authorized representative, after giving not less than twenty-four (24) hours advance notice posted to the Lot, may access a Lot, including the Living Unit, from time to time during reasonable hours, as necessary for maintenance, repair, or replacement of any of the Common Areas. If repair to a Lot, Living Unit or Common Area -- that if not made in a timely manner -- will likely result in immediate and substantial damage to a Common Area or another Lot or Living Unit, then the Board may enter the Lot or the Living Unit to make the emergency repair upon such notice as is reasonable under the circumstances.

## ARTICLE 10 – EASEMENTS

Section 10.1 ~~Section 10.1. Encroachments.~~ Each Lot and the property included in the common and Limited Common Areas shall be subject to an easement for encroachments created by construction, settling, and overhands, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event ~~the~~ structure containing ~~lots~~Lot is partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments of parts of the adjacent Lots 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.

Section 10.2 ~~Section 10.2. Utilities.~~ There is hereby created a blanket easement upon, across, over and under all of the Properties for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Properties to lay construct, renew, operate, and maintain conduits, cables, pipes, mains, ducts, wires, and other necessary equipment on the Properties, provided that all such service shall be place underground, except that 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 10.2, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties in such a way as to unreasonably encroach upon or ~~limited~~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 10.2, 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 10.2, 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, ~~the~~ Association shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 10.3 ~~Section 10.3. 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 and Limited Common Area in the performance of their duties.



Section 10.4 ~~Section 10.4.~~ 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 and Limited Common Areas and any Lot to perform the duties of maintenance and repair.

Section 10.5 ~~Section 10.5.~~ Other Easement. The easement provided for in this Article 10 shall in no way affect any other recorded easement.

## ARTICLE 11 – GENERAL PROVISIONS

Section 11.1 ~~Section 11.1.~~ Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages and against the land to enforce any lien created by ~~these covenants.~~ this Declaration. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any Owner to do so thereafter.

In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner a reasonable attorney's fee. The ~~Trustees~~ Board may levy a fine or penalty in accordance with its Rules and schedule of fines.

Section 11.2 ~~Section 11.2.~~ Severability. All of said conditions, covenants, and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Association and Owners, their successors, heirs, and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause, and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause, or phrase.

Section 11.3 ~~Section 11.3.~~ Duration. The covenants and restrictions of this Declaration shall run with and bind the land, 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 five ~~{(5)}~~ years. However, pursuant to section 11.4 below, this Declaration may be amended at any time.

Section 11.4 ~~Section 11.4.~~ Amendment. The covenants, conditions, and restrictions of this Declaration may be amended by an affirmative vote of at least two-thirds ~~{(2/3)}~~ of all membership votes which Members present in person, by ballot, or ~~represented~~ by proxy are

entitled to cast at a meeting duly called for such purpose. Amendments to ~~the~~this Declaration shall be proposed by either a majority of the ~~Trustees~~Board or by Owners holding thirty percent ~~{(30%+1%)}~~ or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective. Notwithstanding the right of the Owners to amend this Declaration, the Board shall have the right, upon advice of legal counsel and without Owner approval, to amend this Declaration to conform to any local, state, or federal laws which mandate changes to this Declaration or which laws would render one (1) or more covenants obsolete or contrary to law.

Section 11.5 ~~——Section 11.5. Notices—any. When~~ notice is required ~~to be sent~~ under ~~the provisions of this Declaration, notice~~ shall be ~~deemed to have been properly sent when deposited~~given as provided in the ~~U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.~~Bylaws.

Section 11.6 ~~——Section 11.6. 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.

Section 11.7 ~~——Section 11.7. Waivers.~~ No provision contained in ~~the~~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.

Section 11.8 ~~——Section 11.8. Topical Headings.~~ The topical headings contained in this Declaration are for convenience only and do not define, limit, or construe the contents of ~~the~~this Declaration.

Section 11.9 Rules Against Perpetuities. The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat or otherwise void a provision of this Declaration, the Articles, Bylaws, Plat, Rules, or other governing documents of the Association. If for any reason this Declaration does not comply with the Act, such noncompliance does not render a Lot or Common Area unmarketable or otherwise affect the title if the failure is insubstantial.

Section 11.10 Eminent Domain. If part of the Common Area is taken by eminent domain: (a) the entity taking part of the Common Area shall pay to the Association the portion of the compensation awarded for the taking that is attributable to the Common Area; and (b) the Association shall equally divide any portion of the award attributable to the taking of a Limited Common Area among the Owners of the Lots to which the Limited Common Area was allocated at the time of the taking.

The Association shall also submit for recording to each county recorder the court judgment or order in an eminent domain action that results in the taking of some or all of the Common Area.

Section 11.11 Non-Liability for Tort. The Association shall not be liable, in any civil action brought by or on behalf of an Owner, for bodily injury occurring to an Owner, or an Owner's guests, invitees, licensees or trespassers, on the Association's Common Area or Limited Common Area. This immunity from liability shall not be effective if the Association causes bodily injury to the Member on the Common Area or Limited Common Area by its willful, wanton, or grossly negligent act of commission or omission.

Section 11.12 Non-Liability for Common Area. From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of Owners, Owners shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities; inasmuch as the control, operation, management, use and enjoyment, of the Common Area shall be within, under, and subject to the Association – and not Owners. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

Section 11.13 Notice of Violation/Recording. If an Owner violates this Declaration, the Design Guidelines, or the Rules and Regulations of the Association after (i) written notice of the violation, (ii) a reasonable opportunity to be heard, and (iii) a reasonable opportunity to cure the violation, the Association may, in addition to and not in lieu of other remedies, record against the Owner's Lot a "Notice of Covenant/Rule Violation" in the records of the Washington County Recorder. The Notice of Covenant/Rule Violation shall include the following: (i) name of the Owner, (ii) address of the Association, or its manager, (iii) the covenant or rule violated, and (iv) any other information deemed relevant by the Board. The Notice of Covenant/Rule Violation runs with the land and shall be released when the Board determines that the violation has been cured.

Section 11.14 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, and neuter shall each include the masculine, feminine, and neuter. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

Section 11.15 Tenant Liability. Pursuant to Utah Code § 57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the governing documents by the tenant.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, the President and Secretary of the Association hereby certify, on this  
      day of                      , 20     , that this Second Amended and Restated Declaration was  
approved by the affirmative vote of at least two-thirds (2/3) of the membership votes.

**RED MOUNTAIN TOWNHOMES**  
**ASSOCIATION, a Utah nonprofit corporation**

**RED MOUNTAIN TOWNHOMES**  
**ASSOCIATION, a Utah nonprofit corporation**

\_\_\_\_\_  
By:  
Its: President

\_\_\_\_\_  
By:  
Its: Secretary

~~IN WITNESS WHEREOF, THE RED MOUNTAIN TOWNHOMES OWNERS~~  
~~ASSOCIATION, by and through its Board of Trustees, has executed this Amendment to the~~  
~~Declaration as of the~~     day of November 2010, ~~in accordance with the Declaration.~~

State of Utah                      )

\_\_\_\_\_  
:SS

County of Washington)

On this     day of                      , 20     , before me personally appeared  
\_\_\_\_\_, whose identify is personally known to or proved to me on the basis of  
satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is the  
President of the Red Mountain Townhomes Association, a Utah nonprofit corporation, and that  
the foregoing document was signed by him/her on behalf of the Association by authority of its  
Bylaws, Declaration, or resolution of the Board, and he/she acknowledged before me that he/she  
executed the document on behalf of the Association and for its stated purpose.

\_\_\_\_\_  
Notary Public

State of Utah                      )

\_\_\_\_\_  
:SS

County of Washington)

On this     day of                      , 20     , before me personally appeared  
\_\_\_\_\_, whose identify is personally known to or proved to me on the basis of  
satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is the  
Secretary of the Red Mountain Townhomes Association, a Utah nonprofit corporation, and that  
the foregoing document was signed by him/her on behalf of the Association by authority of its  
Bylaws, Declaration, or resolution of the Board, and he/she acknowledged before me that he/she  
executed the document on behalf of the Association and for its stated purpose.

\_\_\_\_\_  
Notary Public

Exhibit A  
(Legal Description)

This Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Red Mountain Townhomes affects the following real property, all located in Washington County, State of Utah:

All of Lot 1, Lot 15, Lots 22 through 35, and Lot 44, together with all Common Area, Red Mountain TH 1 (I), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: I-RMTH-1-1

PARCEL: I-RMTH-1-15

PARCEL: I-RMTH-1-22 through I-RMTH-1-35

PARCEL: I-RMTH-1-44

All of Lots 53 through 86, together with all Common Area, Red Mountain TH 2 (I), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: I-RMTH-2-53 through I-RMTH-2-86

All of Lots 36 through 43 and Lots 45 through 52, together with all Common Area, Red Mountain TH 3 (I), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: I-RMTH-3-36 through I-RMTH-3-43

PARCEL: I-RMTH-3-45 through I-RMTH-3-52

All of Lots 2 through 14 and Lots 16 through 21, together with all Common Area, Red Mountain TH 4 (I), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: I-RMTH-4-2 through I-RMTH-4-14

PARCEL: I-RMTH-4-16 through I-RMTH-4-21