DOC ID 20190026062

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Russell Shirts Washington County Recorder
07/02/2019 08:34:53 AM Fee $40.00 By
EAGLE GATE TITLE INSURANCE AGENCY, INC.

When Recorded Return To:

Arrowhead Ivins, Inc.
PO Box 1364
St. George, Utah 84771

Affects Parcel No: I-SB-11-A-3-B

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

ARROWHEAD

(a Single Family Residential Development)

Ivins, Utah
June 28, 2019

PREAMBLE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("CCRs") for ARROWHEAD (the "Subject Property") is issued by Arrowhead Ivins, Inc., a Utah limited liability company ("Declarant") effective this 28th day of June, 2019 and affects certain real property located in the City of Ivins, Washington County, State of Utah more particularly described in ***Exhibit "A"***, which is attached hereto and incorporated herein by this reference.

DECLARATION

Declarant hereby declares that all of the Subject Property described above 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. This is for the purpose of protecting the value and desirability of the Subject Property. This Declaration and the Plat, along with all Exhibits hereto, shall be construed as covenants of equitable servitude; shall run with the Subject Property and be binding on all parties having any right, title or interest in the Subject Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof. DECLARANT SUBMITS THIS REAL PROPERTY, ALONG WITH ALL IMPROVEMENTS CONSTRUCTED OR TO BE CONSTRUCTED THEREON, TO TITLE 57, CHAPTER 8a OF THE UTAH CODE, DIVIDING, SELLING AND CONVEYING THE SAME TO VARIOUS PURCHASERS SUBJECT TO THE COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS CONTAINED IN THIS DECLARATION.

ARTICLE 1 -- DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1.1. Act means and refers to the Community Association Act (Title 57, Chapter 8a, Utah Code Ann., as amended).

Section 1.2 Association means the Arrowhead Homeowner's Association, its successors and assigns.

Section 1.3. Board of Trustees or Board means the governing body of the Association.

Section 1.4. Declarant means Arrowhead Ivins, Inc., a Utah limited liability company, and the Declarant's successors and assigns.

Section 1.5. Declaration means this instrument, and any amendments.

Section 1.6. Declarant Affiliate means any person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing

member or controlling shareholder.

Section 1.7. Declarant Control Period means the period of time until the last unit is sold and each home is fully constructed as evidenced by a certificate of occupancy, Declarant ceases operations, or Declarant voluntarily transfers Declarant's control whichever occurs sooner. Declarant also has and retains the control and rights in Section 6.1 of this Declaration up until the point in time that each lot is sold and each home receives a certificate of occupancy.

Section 1.8. Common Area shall mean the Subject Property shown on the Plat as Common Area. Common Area is dedicated to the common use and enjoyment of the Owners, and is not dedicated for the use of the general public, except as specifically determined by the Trustees. Specifically exempted from Common Area are Lots and dedicated public streets that are identified on the Plat. Common Area shall also include all land in which the Association has an easement right.

Section 1.9. 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.

Section 1.10. Home means a single family dwelling, without roofs in common with other single family dwelling Lots. When the term "Home" is used it includes fee title to the real property lying directly beneath the single family dwelling, within Lot boundary lines. (In some instances there may be Lot boundary outside the Home walls.)

Section 1.11. Lot means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership and includes a common undivided interest in the Common Area.

Section 1.12. Member means every person or entity who holds membership in the Association. Every Member is an Owner, and every Owner is a Member.

Section 1.13. Mortgage includes "deed of trust" and Mortgagee includes "trust deed beneficiary."

Section 1.14. Owner means the entity, person, or group of persons owning fee simple title to any Lot which is within the Subject Property. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one Owner.

Section 1.15. Plat or Map means the subdivision plat recorded herewith entitled "Arrowhead," consisting of one sheet, prepared and certified by Brandon E. Anderson, a Utah Registered Land Surveyor an employee of Rosenberg Associate or any replacements thereof, or additions thereto.

Section 1.16. Separation Walls means: (1) block landscaping walls which border the Subject Property and separate same from other developments, public rights-of-way, and adjacent Lots; (2) the walls on all rear yard lot walls and serving as rear-lot walls and side-lot walls of any given Lot in the Property; and (3) other yard/privacy walls and fences constructed by Declarant as

part of the individual Home construction.

Section 1.17. Subdivision or Subject Property means that certain real property hereinbefore described—the Arrowhead subdivision—including all Lots, Common areas, public streets and easements as designated in the Plat and such annexations and additions thereto as may hereafter be subjected to this Declaration.

ARTICLE 2 -- PROPERTY RIGHTS

Section 2.1. Title to the Common Area. The Declarant will convey a common undivided interest in the Common Areas to the lot owners upon the initial sale of each lot free and clear of all encumbrances and liens.

Section 2.2. Owners' Easements of Enjoyment. Every Owner has a right and easement of use and enjoyment in and to the Common Area, except as provided in 2.3 or otherwise. This easement is appurtenant to and passes with the title to every Lot, subject to:

(a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service of the Association or provided upon the Common Area, or parking facility situated upon the Common Area. No fees shall be charged for parking specifically designated on the plat as appurtenant to a Lot.

(b) The right of the Association to limit the number of guests of Members using the Common Area.

(c) 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 the Member's Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) 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.

(e) The right of the Association, if there is no Class B membership, with the approval of sixty-seven percent (67%) of the Entire Membership, 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.

(f) 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.

(g) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

(h) The terms and conditions of this Declaration.

(i) The right of the Association, through its Board of Trustees, to adopt rules and regulations concerning use of the Common Area.

(j) The right of the Declarant to take such actions as it may deem necessary so long as the expansion of the Subject Property shall not be complete, including granting leases, easements, and modifying the improvements and design of the Common Area.

Section 2.3. Delegation of Use. An Owner or one having a right of use, is deemed to delegate any right of enjoyment to the Common Area to family members, tenants, or contract purchasers who reside on the Lot. 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 the Member, shall create a debt to the Association. Debts owed to the Association as a result of such damage to the Common Area and facilities shall be an assessment charged to the Owner and his/her Lot.

Section 2.4. Rules. The Board of Trustees shall have the authority to promulgate rules and regulations for the governance of the Subject Property, and persons within the Subject Property. These rules of the Association shall be compiled and shall be made available by the Board of Trustees for inspection and copying.

Section 2.5. Lot. Each Lot is owned in fee simple by the Owner. The purpose of laying out a Lot larger than the Home is to allow flexibility in the original Home 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 and all attached Exhibits, including the Architectural Control Committee Guidelines and Procedures (hereinafter "Architectural Guidelines"), including, but not limited to specific approval by the Architectural Control Committee.

Section 2.6. Combination of Lots. In the event two or more adjacent Lots are held in identical ownership, the Lots may be combined for use and construction purposes. In the event of such a combination of Lots, each Lot shall continue to be assessed individually with respect to the assessments provided for in Article 4 of this Declaration.

ARTICLE 3 -- MEMBERSHIP AND VOTING RIGHTS

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 two classes of voting membership:

CLASS A. Class A Members are all Members with the exception of the Declarant, as defined in the Declaration. 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.

CLASS B. The Class B member is the Declarant. The Class B member is entitled to five (5) votes for each Lot owned. The Class B membership will cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier: (a) upon conveyance of 100% of the Lots subject to this Declaration to a purchaser and complete and approved construction of a home on each of the lots; (b) the expiration of ten (10) years from the first lot conveyance to a purchaser; or (c) the surrender of Class B membership status by the express written action of the Declarant. In the case of expansion (if provided under the Declaration), the Declarant's memberships appurtenant to the Lots in the expansion area shall be Class B memberships. If Declarant shall exercise its option to add additional Lots by platting additional phases as provided in Article 12 herein, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, so that Declarant regains Class B voting status for all Lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof. The Declarant is specifically exempt from abiding by Association rules and the rulemaking procedure during the administrative control period.

ARTICLE 4 -- FINANCES AND OPERATIONS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. Excepting Declarant, each subsequent 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 (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) Additional Assessments; (4) any other amount or assessment levied or charged by the Association through the Board of Trustees pursuant to this Declaration; and (5) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. 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. 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. Successors-in-title shall not be personally liable for delinquent assessments at the time they take title unless that obligation is expressly assumed by them.

Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used for the improvement and maintenance of Subject Property and specifically the Common Area. The assessments must provide for, but are not limited to, the payment of taxes on Common Areas or other property owned by the Association and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Areas; the payment of administrative expenses of the Association; insurance deductible amounts; and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. In addition, the

assessments may be used to establish of a reserve account for repair, maintenance and replacement of those Common Areas which must be replaced on a periodic basis. The assessments may provide, at the discretion of the Board of Trustees, for the payment of other charges including (without limitation) utilities needed to maintain and irrigate the Common Areas. The expenses identified in this Section 4.2 shall be referred to as "Common Expenses".

Section 4.3. Annual Assessment. The Association may change the basis and amount of the assessments prospectively for any annual period provided that such change may be made solely by the Board of Trustees if there is Class B membership, and if there is no Class B membership, any such change shall have the assent of sixty-seven percent (67%) of the votes of the Entire Membership, voting in person or by proxy, at a meeting duly called for this purpose.

The actual annual assessment need not increase annually. The Board shall set the actual annual assessment on an annual basis based on the estimated reasonable expenses needed to meet the reasonable and necessary expenses of the Association. Notice shall be given to each owner as provided in Section 4.5. The Board must set the actual annual assessment to be an amount at or less than the Maximum Annual Assessment.

Section 4.4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Board 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 Area structures, fixtures, landscaping and personal property related thereto. If there is no Class B membership, Special assessments must have the assent of sixty-seven percent (67%) of the votes of the Entire Membership authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 4.5. Notice and Quorum for Any Action Authorized Under Sections 4.3 and 4.4. Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections 4.3 or 4.4 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, or of proxies, entitled to cast sixty percent (60%) of the votes of the Entire 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 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 4.6. Emergency Assessments. Notwithstanding anything contained in this Article 4, the Board, without membership approval, may increase Annual Assessments or levy Special Assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one in which the Board finds one of the following:

(a) an expense required by an order of a court,

(b) an expense necessary to repair or maintain the Subject Property or any part of it for which the Association is responsible where a threat to personal safety on the Subject Property is discovered; or

(c) an expense necessary to repair, maintain or cover actual Association expenses for the Subject Property or any part of it for which the Association is responsible 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; etc.), provided, however, that prior to the imposition or collection of such Assessment, the Board shall pass a resolution containing the written findings as to the necessity of such expense involved and why the expense 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 Assessment. If such expense was created by an unbudgeted utility, maintenance, etc. increase, the Assessment created thereby shall be discontinued by the Board by a similar resolution, if such expense is subsequently reduced, or the next succeeding annual budget incorporates said increase into the annual assessment.

Section 4.7. Uniform Rate of Assessment; Periodic Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots; provided, however, that no assessments shall accrue against the Declarant so long as the Declarant has Class B membership, on the condition that Declarant shall fund any fiscal deficiency in the operations of the Association until the termination of Declarant's Class B membership. Annual and Special Assessments may be collected on a monthly or quarterly basis, as the Board of Trustees determine.

Section 4.8. Date of Commencement of Annual Assessments; Due Dates. The annual assessment provided for herein shall commence to accrue on the date of sale of a Lot. 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 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 as to the amount of said assessment, the annual assessment shall be an amount equal to 90% of the maximum annual assessment determined as provided above. The assessment due dates shall be established by the Board of Trustees. The Board may provide for the payment of annual and special assessments in equal installments throughout the assessment year. The Board of Trustees shall prepare a roster of the 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. 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 of Trustees shall determine appropriate) until paid. In addition, the Board may assess a late fee for each delinquent installment that shall not exceed twenty-five percent (25%) of the installment.

Additionally, the Board of Trustees may, in the name of the Association, undertake one or more of the following:

(a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment;

(b) may 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;

(c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Member;

(d) add 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 or the reasonable rental without regard to the value of the other security; and/or

(e) Appoint any person or entity qualified by law as a Trustee with the power of sale wherein the Trustee may sell any Lot 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.

Section 4.10. Non-Use and Abandonment. No Owner may waive or otherwise escape liability for any Assessment provided for herein by non-use of the Common Area or by abandonment of the Lot.

Section 4.11. Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein:

(a) All property dedicated to and accepted by the City of Ivins or any local public authority,

(b) All Common Area, and

(c) All Lots owned by Declarant.

Section 4.12. Working Capital Fund. Upon acquisition of record title to a Lot by the first Owner thereof, other than Declarant or a builder, the Board may, if necessary, assess a contribution to be made at closing by or on behalf of the Lot purchaser to the working capital of the Association in an amount equal to three months installments of the annual assessment at the rate in effect at the time of the purchase. Payment of this amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of any assessment. The Association shall maintain the working capital funds in segregated accounts for repair, maintenance and replacement of those Common Areas which must be replaced on a periodic basis, to meet unforeseen expenditures, unbudgeted maintenance or repairs or to acquire additional equipment or

services for the benefit of the Members. Such payments to this fund shall not be refundable. Declarant may not use any working capital funds to defray any of its expenses, or to make up any budget deficits.

Section 4.13. Subordination of 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 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 taking title or from the lien of such later assessments.

Section 4.14. 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. 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.

ARTICLE 5 – ASSOCIATION AND BOARD OF TRUSTEES

Section 5.1. Membership. Each Owner shall be entitled and required to be a member of the Association. There shall be two (2) classes of membership in the Association, as set forth in Article 3 herein. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. An Owner shall be entitled to one membership for each Lot owned by him. However, if a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership such as reasonable fees as may be established pursuant to Article 4 and any restrictions on voting set forth in this Declaration or the Bylaws. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Subject Property cannot be separated from the Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Lot shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

Section 5.2. Board Authority; Appointment and Election. Except as otherwise

specifically provided in the Articles, the Bylaws or this Declaration, all delegable rights, powers and obligations of the Association will be exercised by the Board. The Board shall consist of at least three (3) natural Persons as provided in the Bylaws. The Board shall be appointed as provided in this Declaration and in the Bylaws. Notwithstanding the foregoing, the Declarant shall have the exclusive right to appoint, remove and replace all members of the Board.

Section 5.3. Powers and Duties of Board. To make ownership and membership in the community more enjoyable and management of the Subject Property more efficient, Declarant will retain greater authority and the Board will have lesser authority as permitted by law. The duties and obligations of the Association and Board as are now or may hereafter be provided by the Act, the Articles, this Declaration and the Bylaws, including but not limited to the following:

5.3.1. To make and enforce reasonable rules and regulations covering the use, operation and maintenance of the Subject Property and the Lots, consistent with the rights and duties established by the Articles, this Declaration and the Bylaws. Such rules and regulations shall be binding upon all Owners, occupants, invitees, and licensees. To amend these Declarations to comply with changes in State law. Amendments that affect the Owner's contractual rights shall be approved by the Association.

5.3.2. To engage the services of accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore, and to appoint committees as recommended by the Board.

5.3.3. To operate, maintain, repair, improve and replace the Common Areas and Facilities.

5.3.4. To determine and pay the Common Expenses identified in Section 4.2 and elsewhere.

5.3.5. To assess and collect the proportionate share of Common Expenses from the Owners.

5.3.6. To levy Specific Assessments on Owners or Units, as provided in Article 4.

5.3.7. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

5.3.8. To open bank accounts on behalf of the Association and to designate the signatories therefore.

5.3.9. To purchase, hold, sell, convey, mortgage or lease any one or more Lots in the name of the Association or its designee.

5.3.10. To bring, prosecute and settle claims for itself, the Association and the

Subject Property, provided that it shall make no settlement which results in a liability against the Board, the Association or the Project in excess of $2,000 (as measured in 2019 dollars and thereafter adjusted by the Cost of Living Index) without the prior approval of a majority of the Total Votes of the Association at a meeting or by written ballot distributed to Owners by mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Association's insurance carrier and which in either case results in no actual liability of funds of the Association in excess of $2,000 shall not require Association approval.

5.3.11. To obtain insurance for the Association with respect to the Lots and the Common Areas and Facilities, as well as worker's compensation insurance, as required herein or as otherwise recommended as necessary by the Board.

5.3.12. To repair or restore the Common Areas and Facilities following damage or destruction or a permanent taking by the power of, or power in the nature of, eminent domain, or by an action or deed in lieu of condemnation not resulting in the removal of the Subject Property from the provisions of the Act.

5.3.13. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Association and the Board and to the operation of the Subject Property, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

5.3.14. To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Subject Property by Owners in accordance with the terms of this Declaration and the Bylaws.

5.3.15. To do all other acts necessary for the operation and maintenance of the Subject Property, including the maintenance and repair of any Lot if the same is necessary to protect or preserve the Subject Property.

5.3.16. To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of this Declaration and the Bylaws.

5.3.17. To grant conveyances, easements and rights-of-way over the Common Areas and Facilities.

5.3.18. To exercise any right or privilege reasonably implied from or reasonably necessary to effectuate any right or privilege expressly granted to the Board by the Articles, the Bylaws or this Declaration.

5.4. Liability of Board Members and Officers. Members of the Board, the officers and any assistant officers, agents and employees of the Association (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal

liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

5.5. Indemnification of Board Members/Declarant. When a member of the Board, or the Declarant, is sued for liability for actions undertaken in his/her role as a member of the Board or as Declarant, the Association shall indemnify him/her for losses or claims, and undertake all costs of defense, until and unless it is proven that s/he acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board/Declarant who so acted. Members of the Board/Declarant are not personally liable to the victims of crimes occurring at the Subject Property. Punitive damages may not be recovered against the Association, but may be recovered from persons whose gross negligence gave rise to the damages.

5.6. Governmental, Educational, and Religious Interests. For so long as the Declarant owns any property in the Subject Property, the Declarant may designate sites within the Subject Property for government, education or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks and other public facilities, the sites may include Common Areas, in which case the Board shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

5.7. Dedication of Common Areas. The Declarant may dedicate portions of the Common Areas to Washington County, Utah, or to any other local, state, or federal governmental or quasi-governmental entity.

5.8. Provision of Services. The Declarant and Developer may provide services and facilities for the Members of the Association and their guests, lessees, and invitees. The Declarant and Developer shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities, which may be funded as a Common Expense. In addition, the Declarant and Developer shall be authorized to charge additional use and consumption fees of services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Declarant and Developer, without the consent of the Owners, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein is a representation as to what services and facilities will or will not be provided.

5.9. Change of Use of Common Area. During the Declarant Control Period, without

the approval or consent of the Owners, and thereafter, with the consent of a majority of the Total Votes of the Association, and the consent of Declarant (so long as Declarant owns any property in the Project), the Board may recommend change in the use of portions of the Common Areas. Any such recommendation shall be made by Board resolution stating that: (a) the present use or service is no longer in the best interest of the Owners, (b) the new use is for the benefit of the Owners, and (c) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Areas.

Notwithstanding the above, if the Board resolution states that the change will not have an adverse effect on the Association and the Owners, the Board may give notice of the change to all Owners. The notice shall give the Owners a right to object within thirty (30) days of the notice. If less than ten percent (10%) of the Members submit written objections, the change shall be deemed approved, and a meeting shall not be necessary.

5.10. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across the open space from adjacent Lots will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to relocate, prune, or thin trees or other landscaping except as set forth in this Declaration. The owner of the open space shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the open space from time to time subject to applicable law, this Declaration, and the Architectural Guidelines, as incorporated herein, if applicable. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

5.11. Recycling Programs. The Board may establish a recycling program and recycling center within the Subject Property, and in such event all occupants of Lots shall support such program by recycling. To the extent reasonably practical, the Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

5.12. Relationship with Tax-Exempt Organizations. The Association may recommend that agreements or contracts be created with, or grant exclusive and/or non-exclusive easements over the Common Areas to non-profit, tax-exempt organizations for the benefit of the Subject Property, the Association, its Members and residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be, amended from time to time.

5.13. Merger. The Association may recommend that it merge and consolidate with another common interest community, under the terms of Utah law and subject to the approval of Declarant.

5.14. Assumption of Risk. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Subject Property, including all recreational facilities, if any.

Neither the Association, the Board, nor the Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction to utility lines or utility sub-stations adjacent to, near, over, or on the Subject Property. Each Owner and occupant of a Lot and each tenant, guest, and invitee, of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that the Association, the Board, the Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

No provision of the Articles, this Declaration, the Bylaws, the Architectural Guidelines or any rules or regulations adopted by the Board shall be interpreted as creating a duty of the Association, the Board, nor the Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Subject Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association and the Declarant, their trustees, directors, officers, committee and Board members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

5.15. Security. It is the goal of all Owners, including Declarant, to have a safe and healthy environment. However, no written or oral representations regarding the safe and secure nature of the Subject Property shall be construed in whole or in part as guarantees thereof, it being recognized that circumstances beyond the control of the Declarant and the Association may arise. The Association may recommend and support certain activities within the Subject Property designed to make the Subject Property safer than they otherwise might be; provided however, that the Association shall not be obligated to maintain or support such activities.

Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of security within the Subject Property. None of them shall 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 fire protection system, entry gate, patrol, burglar alarm system or other security system or measures, including any mechanism or system for limiting access to the Subject Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in any case prevent loss or provide the detection or protection for which the system is designed or intended.

Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board, and committees, and the Declarant are not insurers. All Owners and occupants of any Lot and all tenants, guests, and invitees, of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board and committees, and the Declarant have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner, relied upon any representations, whether expressed or implied, relative to any entry gate, patrolling of the Subject Property, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Subject Property Subject Property.

ARTICLE 6 – SPECIAL DECLARANT RIGHTS

6.1. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights during the Declarant Control Period, which may be exercised, where applicable, anywhere within the Subject Property:

6.1.1. To complete any improvements indicated on Plats or development plans filed with the Declaration;

6.1.2. To exercise the annexation and other rights reserved in Article 14;

6.1.3. To maintain sales offices, management offices, signs advertising on the property in the Project, as set forth in Section 6.3;

6.1.4. To use easements through the Common Areas and Facilities for the purpose of making improvements within the property in the Subject Property; and

6.1.5. To appoint and remove any director, trustee or officer of the Association as provided in Section 5.2 and the Bylaws.

6.2. Transfer of Special Declarant Rights.

6.2.1. Assignment. The Declarant may assign any Special Declarant Rights, or other special rights and obligations of the Declarant set forth in this Declaration or the Bylaws to any affiliate of the Declarant or a Builder, or Declarant may allow any Declarant Affiliate or the affiliate of a Builder to exercise such rights on behalf of the Declarant. The method of exercising such rights shall be subject to the agreement of the parties thereto, which shall not require recordation in the Public Records.

6.2.2. Transfer. Any or all of the Special Declarant Rights identified in this Article, or any of the other special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. No such transfer shall be effective

unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

6.3. Models, Sales Offices and Management Offices. During the Declarant Control Period, the Declarant and Builders authorized by Declarant may maintain and carry on upon any Lot or Unit owned by Declarant or any portion of the Common Areas and Facilities such facilities and activities as, in the sole opinion of the Declarant, may be reasonably, required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model units, marketing trails, or sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities. The Declarant's or Builder's unilateral right to use the Common Areas and Facilities for purposes stated in this Section shall not be exclusive and shall not unreasonably interfere with use of such Common Areas and Facilities by Owners.

6.4. Construction of Improvements. The Declarant and its employees, agents and designees shall also have a right and easement during the Declarant Control Period over and upon all of the Common Areas and Facilities for the purpose of making, constructing and installing such improvements to the Common Areas and Facilities as it deems appropriate in its sole discretion.

6.5. Other Covenants Prohibited. During the Declarant Control Period, no Person shall record any declaration of covenants, condition and restrictions, or declaration of condominium or similar instrument affecting any portion of the Subject Property without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

6.6. Master Planned Community. Each Owner, by accepting title to a Lot and becoming an Owner, and each other Person, by acquiring any interest in the Project, acknowledges awareness that the Arrowhead subdivision is a master planned community, the development of which may extend over many years, and agrees not to protest or otherwise object to: (a) zoning or changes in zoning or to uses of, or changes in density of, the Subject Property during the Declarant Control Period, or (b) changes in any conceptual or master plan for the Subject Property; provided, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration.

6.7. Equal Treatment. In addition to those rights to equal treatment provided in the Act and during the Declarant Control Period, no party, without the prior written consent of the Declarant, shall adopt any policy, rule or procedure that:

6.7.1. Limits the access of the Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas and Facilities or to any property owned by any of them;

6.7.2. Limits or prevents the Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Common Areas and Facilities or any property owned by any of them in promotional materials;

6.7.3. Limits or prevents purchasers of new residential housing constructed by the Declarant, their successors, assigns and/or affiliates in the Subject Property from becoming Members of the Association or enjoying full use of its Common Areas and Facilities, subject to the membership provisions of this Declaration and the Bylaws;

6.7.4. Discriminates against or singles out any group of Association Members or prospective members or the Declarant [this provision shall expressly prohibit the establishment of a fee structure (i.e., assessments, Special Assessments and other mandatory fees or charges other than Specific Assessments, chartered club dues, and use fees) that discriminates against or singles out any group of Association Members or the Declarant, but shall not prohibit the establishment of Specific Assessments];

6.7.5. Impacts the ability of the Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for the Arrowhead subdivision, as such plans are expressed in the Plat(s), as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by the Declarant and limiting the establishment by the Declarant of easements necessary to complete the Arrowhead subdivision shall be expressly included in this provision. Easements that may be established by the Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or

6.7.6. Impacts the ability of the Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

6.8. Rights to Use Common Area for Special Events. During the Declarant Control Period, the Declarant shall have the right to use all Common Areas and Facilities, including any recreational facilities, to sponsor special events for charitable, philanthropic, political, or marketing purposes as determined by the Declarant in its sole discretion. After the Declarant Control Period, Declarant shall continue to have the right to use all Common Areas and Facilities for up to eight (8) days each year to sponsor events. Any such event shall be subject to the following conditions:

6.8.1. The availability of the facilities at the time a request is submitted;

6.8.2. The Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and

6.8.3. The Declarant shall return the facilities and personal property used in conjunction with the special event in the same condition as existed prior to the special events.

6.9. Amendment. This Article shall not be amended without the prior written consent of the Declarant, during the Declarant Control Period. The rights contained in this Article shall terminate concurrently with termination of the Declarant Control Period. Thereafter, the Declarant and

Builders may continue to use the Common Areas and Facilities for purposes stated in this Article pursuant to a rental or lease agreement between the Declarant and/or such Builder and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas and Facilities.

ARTICLE 7 -- INSURANCE

Section 7.1. Casualty Insurance on Insurable Common Area. The Trustees 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 or managed by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable. 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. 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 of Trustees 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 lessees, then the Board may assess the full amount of such deductible against such Owner and the Owner's Lot.

Section 7.2. Replacement or Repair of Common Areas. 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 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 of damage or destruction by fire or other casualty to any portion of the Subdivision covered by insurance written in the name of the Association, the Board of Trustees are 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 7.3. Liability Insurance. The Board of Trustees shall obtain a comprehensive policy of public liability insurance covering all of the Common Areas 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.

Section 7.4. Fidelity Insurance. The Board of Trustees may elect to obtain fidelity coverage against dishonest acts on the part of Trustees, 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 Trustees 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-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 7.5. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Trustees 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.

ARTICLE 8 -- ARCHITECTURAL CONTROL COMMITTEE

Section 8.1. Declarant Exemption and Architectural Control Committee. The Declarant is exempt from and shall not be required to comply with the provisions of this Article in the initial construction of the site improvements for the Subdivision and in the construction of any spec home. The Declarant shall fulfill all functions of the Architectural Control Committee ("ACC") under this Declaration until the Declarant expressly surrenders this right by written instrument, or until each Lot in the Subdivision (including any expansion area) has a Home constructed thereon.

Section 8.2. Architectural Control Committee Review and Approval. No structure, building, fence, wall or addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition or change or alteration to any Lot or Home 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 Board of Trustees or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In seeking approval, an Owner shall submit the plans and specifications to a standing member of the ACC who, upon receipt thereof, shall provide the Owner with a written, dated acknowledgment of receipt. In the event said Trustees, or their designated committee fail 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 will be deemed to have been made.

Section 8.3. Establishment of Architectural Guidelines. The Association grants authority to the Board Trustees to establish rules and regulations, at the Trustees' sole discretion, pertaining to the use of Limited Common Areas adjacent to Homes by Owners and to establish and appoint a committee to oversee and manage such rules and regulations. Nothing herein shall require the Trustees to establish such rules and regulations.

The Trustees shall also establish Architectural Control Committee Guidelines and Procedures ("Architectural Guidelines") pertaining to the development, construction and maintenance of Homes and Lots within the Subject Property. Said Architectural Guidelines are attached hereto as Exhibit "B", and are incorporated herein by reference.

ARTICLE 9 -- ARCHITECTURAL CONTROLS AND STANDARDS

Section. 9.1. General Provisions.

No structure or thing shall be placed, erected, or installed upon any Lot and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Subject Property except in compliance with this Article and the attached Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of his or her Home without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot or Home visible from outside the structure shall be subject to approval.

All dwellings constructed on any portion of a Lot within the Subject Property shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion.

This Article shall not apply to Declarant's activities, or to activities of the Association during the period during which Declarant has Class B membership (the Administrative Control Period).

Section 9.2. Architectural Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Subject Property acknowledges that Declarant, as the developer of the Subject Property and as an owner of portions of the Subject Property as well as other real estate within the vicinity of the Subject Property, has substantial interest in ensuring that the improvements within the Subject Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in the Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe not duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of the Subject Property or any real property adjacent to the Subject Property, unless earlier terminated in a written instrument which Declarant has executed and Recorded.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or portion of its reserved rights under this Article to (i) an Architectural Control Committee appointed by the Board of Trustee (the "ACC"), or (ii) a committee comprised or architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to them.

(b) Architectural Control Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Articles, the Association, acting through the ACC, shall assume jurisdiction over architectural matters. The ACC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ACC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount if any, as the Board may establish.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ACC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees; Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

Section 9.3. Guidelines and Procedures.

(a) Architectural Control Committee Guidelines and Procedures. Declarant may prepare the initial Architectural Control Committee Guidelines and Procedures ("Architectural Guidelines"), which may contain general provisions applicable to all of the Subject Property as well as specific provisions which vary from Neighborhood to Neighborhood. The Architectural Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer and/or Declarant in considering applications. The Architectural Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Architectural Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long

as it owns any portion of or has a right to expand the Subject Property, notwithstanding a delegation of reviewing authority to the ACC, unless Declarant also delegates the power to amend to the ACC. Upon termination or delegation of Declarant's right to amend, the ACC shall have the authority to amend the Architectural Guidelines with the Consent of the Board.

Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer and/or Declarant shall make the Architectural Guidelines available to Owners and Builders who seek to engage in development or construction within the Subject Property. In Declarant's discretion, such Architectural Guidelines may be Recorded, in which even the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

(b) Procedures. Except as otherwise specifically provided in the Architectural Guidelines, no activities shall commence on any portion of an Owner's Lot until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters or aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Until expiration of Declarant's rights under this Article, the ACC shall notify Declarant in writing within three business days after the ACC has approved any application within the scope of matters delegated to the ACC by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to

the ACC.

The Reviewer shall notify the applicant in writing of the final determination on any application within ten days thereafter or, with respect to any determination by the ACC subject to Declarant's veto right, within ten days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

If construction does not commence on a project for which plans have been approved within six (6) months after the date of approval and Owner has not sought and obtained an extension of this time period, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed with the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of these Articles, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Section 9.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article may change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

Section 9.5. Variances. The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 9.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Subject Property; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and neither the Declarant, the Association, the Board, the ACC, nor the Reviewer shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or it subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot or Home. In all matters, the Board, the ACC, and the members of each shall be defended and indemnified by the Association as provided in Section 5.5.

Section 9.7. Certificate of Compliance. Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Architectural Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall preclude the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

ARTICLE 10 -- EXTERIOR MAINTENANCE

Section 10.1. Exterior Maintenance by Owner. Each Owner shall be responsible for maintenance to the exterior of their Home and the grounds around their Home upon their Lot. The Board of Trustees may, however, in the event of default of the Owner to perform his/her exterior maintenance, and after: a) a 2/3rd vote of the Board, and b) 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 a Home and Lot. The cost of such maintenance shall be assessed against the Lot as a special assessment.

Section 10.2. Exterior Maintenance by Association. The Association shall be responsible for maintenance upon the Common Areas. The cost of such maintenance shall be a common expense.

ARTICLE 11 -- USE RESTRICTIONS

Section 11.1. Declarant Exemption. Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant 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 period of construction and sale of said Lots and upon such portion of the Subdivision 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 Subdivision into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area and facilities thereon, without charge during the sales and construction period to aid in its marketing activities. Declarant is specifically exempt from abiding by Association rules and the rulemaking procedure during the Declarant Control Period.

Section 11.2. General Use Restrictions. All of the Lots within the Subject Property which are subject to this Declaration are hereby restricted to single family residential dwellings and any allowed buildings in connection therewith as may be permitted in the Architectural Guidelines attached hereto as Exhibit "B". After the initial construction on a Lot, no subsequent building or structure shall be constructed unless allowed pursuant to the Architectural Guidelines and by the ACC; and if so, 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, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time.

Section 11.3. Signs; Commercial Activity. Except for one "For Rent" or "For Sale" sign of not more than two (2) 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 Subject Property. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the Subdivision unless (1) prior approval is given in writing by the Board of Trustees for application by the Owner to the City of Ivins for a license to conduct such commercial activities, and (2) the necessary approval is obtained from the City of Ivins. The foregoing restrictions shall not apply to the commercial activities, banners, flags and signs, 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 hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

Section 11.4. Quiet Enjoyment. No noxious or offensive activity shall be carried on upon any Lot or part of the Subject Property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Subdivision, 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 11.5. 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 or as may be allowed by the Board of Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Owners of Lots in the Subdivision and is necessary for the protection of the interests of all said Owners in and to the Common Area. As part of the overall program of development of the Subdivision into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area and facilities thereon, without charge during the sales and construction period to aid in its marketing activities.

Section 11.6. Parking. No motor vehicle which is inoperable shall be allowed to exist on

or around the exterior of a Home within the Subdivision, and any inoperable motor vehicle which remains parked over 48 hours shall be subject to removal by the Association, at the owner's expense. Driveways in front of each garage shall be used for parking of motor vehicles actually used by the Owner or occupant of the Home or their immediate family or guests, for personal use and not for commercial use. Except for a 24 hour period for the purpose of cleaning, loading and unloading, all recreational vehicles, boats, travel trailers and similar personal property must be parked upon a Lot to the side of a Home behind a screened or fenced area that may not extend beyond the furthest most part of the Home closest to the street in which the Lot fronts. The vehicle must be of a size which cannot be seen above the top of the fence. It is the intent of this provision for Owners to park their vehicles off the street, leaving the street for guest parking, thus providing for an uncluttered, safe streetscape.

Section 11.7. 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 ACC.

Section 11.8. Exterior Television or Other Antennas. No exterior radio or other antennas, except one television/cable/satellite antenna, to the extent not prohibited by law, which shall not exceed eighteen inches (18") in diameter, 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 Subject Property without prior written approval of the ACC.

Section 11.9. 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 11.10. 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 Subject 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 Subject Property.

Section 11.11. 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 nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the Subject Property or other Lots or Owners.

Section 11.12. Lease Occupancy or Other Temporary Occupancy. No Owner shall lease a Home for transient or hotel purposes. No Home shall be made subject to any timeshare program, interval ownership, or similar program whereby the right to exclusive use of the Home rotates among multiple owners or members of a program on a fixed or floating time schedule over a period of years. By operation of law, an Owner may rent or lease the Owner's Home to another individual(s). Any Owner so doing shall comply with the following provisions of this Section 11.12.

(a) Any temporary or other occupancy, other than by the titled Owner, the Owner's

family, friends, and invited guests, must be for a period of at least six (6) months. No Owner may designate a tenant as family, friends or invited guests in order to avoid the intent of this Section 11.12.

(b) Each such occupancy shall be established between the parties by a written lease/rental/occupancy agreement, a copy of which shall be submitted by the Owner to the Board of Trustees, or appointee.

(c) Any lease agreement between an Owner and a lessee/renter shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, and all rules and regulations enacted by the Board of Trustees. The lease agreement must further provide that any failure by lessee/renter to comply with the terms of such documents and rules and regulations shall be a default under the lease.

Section 11.13. Violation Constitutes a Nuisance. Any act or omission whereby any restriction, condition or covenant as set forth in this Declaration if violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated by Declarant or affected property Owners and such remedy shall be deemed to be cumulative and not exclusive.

Section 11.14. Rear Yard Landscape. Buyer of any Lot containing a newly constructed Home shall complete the landscaping of the rear yard by within 180 days of the City of Ivins issuing a Certificate of Occupancy (if the Home is constructed by an Owner/Builder) or within 180 days of the Owner becoming the titled owner of the Lot (if the Home is initially owned constructed by a contractor or developer and sold to an Owner).

Section 11.15. Compliance with Ivins City Ordinances. All construction and uses upon a Lot or the Common Areas shall be in compliance with the ordinances, standards, safety codes and regulations adopted by the City of Ivins ("City Standard"). In the event any regulation contained in this Declaration contradicts a City Standard, the more restrictive shall control.

ARTICLE 12 – SEPARATION WALLS

Section 12.1. Separation Walls. Declarant may construct block landscaping walls which border the Subject Property and separate same from other developments, public rights-of-way, and adjacent parcels. Such walls shall be deemed Separation Walls.

Section 12.2. Repair and Maintenance. The Association shall be responsible for the cost of reasonable repair and maintenance of all Separation Walls. No changes or alterations shall be made to Separation Walls by Lot Owners without prior written approval of the ACC. The cost of repair for damage caused to Separation Walls by the acts of Lot Owners or their guests and assigns shall be a lien upon such Owner's Lot and shall be added to the annual assessment as provided in Article 4.

Section 12.3. Decoration. No Owner whose Lot includes a Separation Wall shall paint, construct addition to, color, or otherwise decorate the interior or exterior surface of a Separation Wall. Any Owner found in violation hereof shall bear the whole cost of refurbishing and restoring

the affected wall to its original condition, consistent with other portions of the Separation Walls.

Section 12.4. Applicability. This Article, Sections 12.1 through 12.5, shall be applicable to walls built by Declarant for the purposes stated in Section 10.1. This Article shall not apply to additional walls constructed by Owners, as approved by the ACC, as provided in this Declaration. All Separation Walls built by Owners shall be repaired and maintained by the Owner constructing such walls, and such walls shall be constructed pursuant to the Architectural Guidelines incorporated herein by reference. All Separation Walls constructed by Owners must not be decorated in a manner inconsistent with said Architectural Guidelines.

ARTICLE 13 -- EASEMENTS

Section 13.1. Encroachments. Each Lot and the property included in the Common Areas is subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same shall and does exist, so long as they stand.

Section 13.2. Utilities. There is hereby created a blanket easement upon, across, over and under all Ivins City designated setbacks of a Lot within the Subject Property for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Subject Property to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Subject Property, provided that all such services shall be placed within a setback, and be 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 and may be outside of an Ivins City designated setback if it is located to directly connect said utility to a Home upon the Lot. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on a Lot in such a way as to unreasonably encroach upon or limit the use of the 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.

Section 13.3. Easement for Declarant. The Declarant shall have a transferrable easement over and on the Common Areas and facilities and utilities for the purpose of making improvements on the Subject Property or on any additional land under the Declaration, or any development, related or unrelated, on land described herein or adjacent to the Subject Property and for the purpose of doing all things reasonably necessary and proper in connection with the same. Declarant expressly reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use of Common Areas, and the right to connect to and use roadways and utilities owned or controlled by the Association or serving the Subject Property.

Section 13.4. 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 13.5. 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 13.6. Other Easements. The easements provided for in this Article shall in no way affect any other recorded easement.

ARTICLE 14 -- EXPANSION

Section 14.1. Future Expansion Right. Declarant reserves the right, at its sole election, to expand the Subdivision and the property subject to this Declaration by unilateral action of Declarant, without the consent of Owners, for a period of ten (10) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah. The property, all or part of which may be included in one or more expansions, is located in Washington County, Utah, and is more particularly described as follows:

*All property located in the general vicinity of the Subject Property described in **Exhibit "A"**, which is contiguous to part of the Subdivision.*

ARTICLE 15 –

ESCALATING ALTERNATIVE DISPUTE RESOLUTION

15.1. Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Owners, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Subject Property, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Sections 15.2 ("Claims") shall, only and must be pursued and resolved using the procedures set forth in Section 15.3 in lieu of filing suit in any court.

15.2. Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Articles, this Declaration, the Bylaws, the Architectural Guidelines, or the rights, obligations and duties of any Bound Party under such documents or instruments or relating to the design or construction of improvements on the Subject Property shall, only, and must be pursued subject to the provisions of Section 15.3. The filing of any claim contrary to this Article is a material breach of this Declaration subjecting the breaching party to damages, costs and attorney fees to the other party incurred in connection with such breach. The following claims are exempt from this Article 15:

15.2.1. Any suit against any Bound Party to enforce the provisions of Article 4;

15.2.2. Any suit to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the ability to enforce the provisions of Articles 9-12;

15.3. Mandatory Procedures.

15.3.1. Notice. Any Bound Party or their agent having a Claim ("Claimant") against any other Bound Party or their agent ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

15.3.1.1. The nature of the Claim, including the Persons involved and Respondent's role in the Claim;

15.3.1.2. The legal basis of the Claim (i.e., the authority out of which the Claim arises);

15.3.1.3. Claimant's proposed remedy; and

15.3.1.4. That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

15.3.2. Negotiation and Mediation.

15.3.2.1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any Bound Party specifically agrees that it will not engage in any disparaging or offensive communications to anyone regarding any other party including their agents, employees and related entities and regarding any claim or dispute subject to this Article.

15.3.2.2. If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in Utah.

15.3.2.3. IF CLAIMANT DOES NOT SUBMIT THE CLAIM TO MEDIATION WITHIN NINETY (90) DAYS AFTER TERMINATION OF NEGOTIATIONS, OR DOES NOT APPEAR FOR THE MEDIATION, CLAIMANT SHALL BE DEEMED TO HAVE WAIVED THE CLAIM, AND RESPONDENT SHALL HAVE BEEN RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY TO CLAIMANT ON ACCOUNT OF SUCH CLAIM; PROVIDED NOTHING HEREIN SHALL RELEASE OR DISCHARGE RESPONDENT FROM ANY LIABILITY TO ANY PERSON OTHER THAN THE CLAIMANT.

15.3.2.4. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

15.3.2.5. Within seven (7) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

15.3.3. Arbitration.

15.3.3.1. IF THE PARTIES DO NOT AGREE IN WRITING TO A SETTLEMENT OF THE CLAIM WITHIN FIFTEEN (15) DAYS OF THE TERMINATION OF MEDIATION, THE CLAIMANT SHALL HAVE FIFTEEN (15) ADDITIONAL DAYS TO SUBMIT THE CLAIM TO ARBITRATION IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION. IF NOT TIMELY SUBMITTED TO ARBITRATION OR IF THE CLAIMANT FAILS TO APPEAR FOR THE ARBITRATION PROCEEDING, THE CLAIM SHALL BE DEEMED ABANDONED, THE RESPONDENT SHALL BE RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY TO CLAIMANT ARISING OUT OF SUCH CLAIM; PROVIDED, NOTHING HEREIN SHALL RELEASE OR DISCHARGE RESPONDENT FROM ANY LIABILITY TO PERSONS OTHER THAN CLAIMANT.

15.3.3.2. This Subsection 15.3.3.2 is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Utah. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Utah.

15.4 Allocation of Costs of Resolving Claims.

15.4.1. Subject to 15.4.2, each Party shall bear its own costs, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by the Mediators, the Arbitrators and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

15.4.2. Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

15.5. Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or binding Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

ARTICLE 16 – GENERAL PROVISIONS

Section 16.1. Enforcement. The Association, the Declarant 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, the incorporated Architectural Guidelines, 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. 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 may levy a fine or penalty not to exceed ten percent (10%) of the amount of the annual assessment against any Owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing.

Section 16.2. 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 Declarant, 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 16.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Subject 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.

Section 16.4. 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, postpaid, to the last known address of the person who is entitled to receive it.

Section 16.5. 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 16.6. Waivers. No provision contained in the 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 16.7. Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in the Articles, this Declaration, the Bylaws, the Architectural Guidelines or any rules and regulations applicable to the Subject Property and the Association, and except as provided in Article 15, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Specific Assessment with respect to the Lot(s) involved in the action.

Section 16.8. Topical Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

ARTICLE 17 -- AMENDMENT

Section 17.1. Declarant's Right to Amend. Until all portions of the Subject Property are developed and all Lots within the Subdivision have been sold and are no longer owned by the Declarant, or until the right to enlarge the Subject Property through the addition of tracts of land or subdivisions pursuant to Article 14 terminates, whichever event first occurs, Declarant shall have, and is hereby vested with the right to unilaterally amend this Declaration and or the Plat, or allow a lot line adjustment according to law, as may be reasonably necessary or desirable at the sole discretion of Declarant.

Section 17.2. Lot Owners Right to Amend. Subject to Section 14.1, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Entire Membership, and thereafter, by an instrument signed by not less than sixty percent (60%) of the Entire Membership, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to the Declaration under this Section 16.2, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the members will vote on said amendment.

ARTICLE 18 -- ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned by written notarized instrument recorded in the Official Records on file in the Office of the Recorder of Washington County, State of Utah.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this day of June, 2019.

DECLARANT: Arrowhead Ivins, Inc.

Jake Meng

Jason Rogers

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 27 day of June, 2019, before me personally appeared Jake Meng and Jason Rogers whose identities are 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 they are Declarants of Arrowhead Ivins, Inc., and that the foregoing document was signed by them on behalf of that company by authority of its operating agreement or of a resolution of its members, and they acknowledged before me that the company executed this document and the document was the act of the company for its stated purpose.

NOTARY PUBLIC

LESLIE HEPPLER
Notary Public
State Of Utah
My Commission Expires 06-14-2021
COMMISSION NO. 695363

EXHIBIT "A"

Legal Description – Arrowhead Subdivision

Beginning at a point on the section line, said point being South 89°24'17" East 1,334.51 feet from the Southwest Corner of Section 31, Township 41 South, Range 16 West, Salt Lake Base & Meridian, and running thence North 01°21'17" East 640.69 feet; thence Northerly 620.13 feet along an arc of a 1,170.00 feet radius curve to the left (center bears North 88°38'43" West, long chord bears North 13°49'46" West 612.90 feet with a central angle of 30°22'06"); thence North 60°59'12" East 60.91 feet; thence Easterly 143.78 feet along an arc of a 500.00 feet radius curve to the right (center bears South 29°00'48" East, long chord bears North 69°13'29" East 143.29 feet with a central angle of 16°28'34") to the westerly line of Lot 6, St. George and Santa Clara Bench Irrigation Company Subdivision; thence North 01°21'17" East 12.93 feet along said west line of Block 6 to the northwest corner of Lot 3, Said Block 6; thence South 89°28'52" East 333.11 feet along the northerly line of said Lot 3 to the northwest corner of Tenaya Sands Phase 2 Subdivision, as found on record at the Washington County, Utah Recorder's Office as Entry No. 20060021549, thence South 01°19'45" West 1,330.00 feet along the westerly line to the southwest corner of said Tenaya Sands Phase 2 Subdivision, said point being on the section line; thence North 89°24'17" West 358.44 feet along the section line to the Point of Beginning.