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Mary Ann Trussell, Summit County Utah Recorder
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NEVIS AT NEWPARK SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NEVIS AT NEWPARK SUBDIVISION (the "Declaration") made this 2 day of Oct 2014, by NEVIS AT NEWPARK LLC, a Utah limited liability company (the "Declarant").

RECITALS

A. The Declarant is the owner of certain land in Summit County, Utah, shown on the Plat, (as herein after defined), recorded among the Land Records of the County ("Land Records"). All the real property situated in Summit County, Utah, which is more particularly described as Exhibit A attached hereto and made a part hereof by this reference and any additional land that is annexed (the "Property) shall be subject this Declaration.

B. It is the intention of the Declarant to develop the land as a residential community, and to insure therefore a uniform plan and scheme of development, and unto that end the Declarant has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens (collectively, the "Covenants"), as set forth herein for the following purposes:

1) To insure uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined).

2) To facilitate the sale by the Declarant, its successors and assigns, of the land in the Community by reason of its ability to assure such purchasers of uniformity.

3) To make certain that the Covenants shall apply uniformly to all Lots for the mutual advantage of the Declarant, the Owners and any Mortgagee (as such capitalized terms are defined herein) and to all those who may in the future claim title through any of the above.

4) To provide for the benefit of the Owners, the preservation of the value and amenities in the Community, and the maintenance of certain reserved open spaces and common areas, including but not limited to easements, charges and liens, herein below set forth, and for the creation of an association to be delegated and assigned the powers of maintaining and administering the Common Area (as hereinafter defined), and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; which association shall be incorporated under the laws of the State of Utah, as a nonprofit corporation, for the purpose of exercising the functions as aforesaid.

C. The Lots are also part of the Master Association and all of the Lots and any Common Area are encumbered by and subject to all of the covenants, conditions, restrictions and easements set forth in the Master CC&Rs. As provided above in this Declaration, the Master Association is responsible for maintaining and repairing the areas outside of the exterior walls of the Dwelling including lawn care and landscaping of the yards surrounding the Dwellings but excluding the decks located on the main living area of any Dwelling. The lots and all Owners are bound by and subject to all of the use restrictions contained in the Master CC&Rs and/or in the rules and regulations from time to time promulgated by the Master Association. The use restrictions are in addition to those contained in this Declaration.

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NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT the Declarant does hereby establish and impose upon the Property (as hereinafter defined), the Covenants for the benefit of and to be observed and enforced by the Declarant, its successors and assigns, as well as by all purchasers of Lots, to wit:

ARTICLE I – DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.1 "Association" shall mean and refer to the Nevis at Newpark Homeowners Association, Inc., a Utah non-profit corporation.

1.2 "Builder" shall mean any person or entity other than the Declarant, which shall, in the ordinary course of such person's business, construct a dwelling on a Lot and sell or lease it to another person to occupy as such person's residence.

1.3 "Common Area" shall mean and refer to those areas of land shown and designated on the Plat as "Common Area," which are intended to be devoted to the common use and enjoyment of the Owners of the Lots, including but not limited to reserved open spaces, maintenance areas, tot lots, non-tidal wetlands, if any, recreational areas with any improvements located thereon, steep slopes, private streets, parking areas, storm water detention facilities, sewer lift stations and any other real property or other facilities which the Association owns and/or in which the Association acquires a right of use for the benefit of the Association and its members, saving and excepting, however, so much of the land previously conveyed or to be conveyed to a governmental body.

1.4 "Community" or "Project" shall mean and refer to all of the land hereby made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office and any Additional Property (as such term is hereinafter defined) that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office. The Community is not a cooperative, nor does it contain any condominiums governed by the Utah Condominium Ownership Act.

1.5 "Declarant" shall mean and refer to Nevis at Newpark LLC, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property as an entirety, without reservation of any kind; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.

1.6 "Development Period" shall mean the time between the date of recordation of this Declaration among the Recorder's Office and the date on which the Class B membership in the Association converts to a Class A membership as described in Article IV.

1.7 "Dwelling" shall mean the residential dwelling unit together with any other Structures on the same Lot.

1.8 "Lot" and/or "Lots" shall mean and refer to those portions of the Property that are subdivided parcels of land shown and defined as lots or plots of ground (exclusive of the Common Area) and designated by numerals on the Plat, on which a dwelling is proposed to be constructed.

1.9 "Master Association" shall mean and refer to Newpark Owners Association, Inc., a Utah nonprofit corporation.

1.10 "Master CC&Rs" shall mean the Fourth Amended and Restated Declaration of Covenants Conditions and Restrictions of Newpark Owners Association dated August 18, 2006, and recorded in the Office of the Summit County Recorder on August 31, 2006 as Entry No. 00789752, in Book 01814, at Pages 01035 et seq., as amended by that certain First Amendment to Fourth Amended and Restated Declaration of Covenants Conditions and Restrictions of Newpark Owners Association dated January 1, 2012, and recorded in the Office of the Summit County Recorder on June 7, 2012 as Entry No. 00946748, in Book 2131, at Pages 938 et seq., and as may subsequently be amended as provided therein.

1.11 "Mortgage" means any mortgage or deed of trust encumbering any Lot or any or all of the Common Area, and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.

1.12 "Mortgagee" means the person secured by a Mortgage.

1.13 "Plat" shall mean and refer to the plat entitled, "NEVIS AT NEWPARK SUBDIVISION" recorded among the Recorder's Office of Summit County, Utah, and any plats recorded among the Recorder's Office in substitution therefor or amendment thereof, plus any plats hereafter recorded among the Recorder's Office of any Additional Property that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed, and recorded among the Recorder's Office.

1.14 "Property" shall mean and refer to all of the real property described in Exhibit A attached hereto, and any additional land at such time as it is hereafter expressly made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office.

1.15 "Owner" or "Owners" shall mean, refer to and include the person, firm, corporation, trustee, or legal entity, or the combination thereof, including contract sellers, holding the fee simple record title to a Lot, as said Lot is now or may from time to time hereafter be created or established, either in his, her, or its own name, as joint tenants, tenants in common, tenants by the entireties, or tenants in co-partnership, if the Lot is held in such real property tenancy or partnership relationship. If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, hold the record title to any one (1) Lot, whether it is in a real property tenancy, or partnership relationship, or otherwise, all of the same, as a unit, shall be deemed a single Owner and shall be or become a single member of the Association by virtue of ownership of such Lot. The term "Owner," however, shall not mean, refer to or include any contract purchaser nor shall it include a Mortgagee.

1.16 "Structure" means any object, thing or device, the placement of which upon the Property (or any part thereof) may affect the appearance of the Property (or any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, shed,

greenhouse, bathhouse, coop or cage, covered or uncovered patio, clothesline, radio, television or other antenna or "dish", fence, sign, curbing, paving, wall, roadway, walkway, exterior light, landscape, hedge, trees, shrubbery, planting, signboard or any temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement made to the Property or any part thereof. "Structure" shall also mean (i) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across the Property, and (ii) any change in the grade of the Property (or any part thereof) of more than six inches (6") from that existing at the time of first ownership by an Owner hereunder other than the Declarant.

ARTICLE II - COVENANTS, CONDITIONS AND RESTRICTIONS

2.1 **ADMINISTRATION: ARCHITECTURAL REVIEW COMMITTEE**. The Architectural Review Committee, which shall be appointed by the Declarant during the Development Period and thereafter by the Board of Directors of the Association (the "Architectural Review Committee") shall have all the rights, powers and duties granted to it pursuant to this Declaration. The initial members of the Architectural Review Committee are John Aldous, Michael Brodsky and Phil Mosher. The Architectural Review Committee shall at all times be comprised of at least three (3) members. At any time, or from time to time, during the Development Period, the initial members of the Architectural Review Committee may be replaced for any reason (including death or resignation) with other individuals selected by the Declarant in its sole discretion. All questions shall be decided by a majority of the members of the Architectural Review Committee, and such majority shall be necessary and sufficient to act in each instance and on all matters. Each member of the Architectural Review Committee, now or hereafter appointed shall act without compensation for services performed pursuant to this Declaration. The Declarant hereby grants to the Architectural Review Committee, its successors and assigns, the right to establish architectural design criteria for the community (the "Design Guidelines"), which shall be made available to all members, and to waive such portion or portions of the Covenants numbered 2.3 through 2.22 of this Article II as the Architectural Review Committee, in its sole discretion, may deem advisable and in the best interests of the Community. The provisions of this Section 2.1 shall be in addition to any applicable provisions of the Master CC&Rs relating to architectural control and approval.

2.2 **ARCHITECTURAL REVIEW**.

(a) No Structure (other than construction or development by, for or under contract with Declarant) shall be constructed on any Lot nor shall any addition (including awnings and screens), change, or alteration therein or thereto (including any retreatment by painting or otherwise of any exterior part thereof unless the original color and material are used) (collectively, "Alterations") be made to the exterior of any Structure and/or contour of any Lot, nor shall any work be commenced or performed which may result in a change of the exterior appearance of any Structure until the plans and specifications, in duplicate, showing the nature, kind, shape, dimensions, material, floor plans, color scheme, location, proposed topographical changes, together with the estimated costs of said Alterations or construction, the proposed construction schedule, and a designation of the party or parties to perform the work, have been submitted to and approved in writing by the Architectural Review Committee, its successors and assigns, and until all necessary permits and any other governmental or quasi-governmental approvals have been obtained. The approval of the Architectural Review Committee of any Structure or Alterations shall in no way be deemed to relieve the Owner of any Lot from its obligation to obtain any and all

permits and approvals necessary from local governmental authorities for such Structure or Alterations.

(b) The Architectural Review Committee shall consider applications for approval of plans, specifications, etc., upon the basis of conformity with this Declaration, applicable law and the Design Guidelines, if any, and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors: the quality of workmanship; nature and durability of materials; harmony of external design with existing structures; choice of colors; changes in topography, grade elevations and/or drainage; the ability of the party or parties designated by the Owner to complete the Structure or Alterations proposed in accordance with this Declaration, including, without limiting the foregoing, such factors as background, experience, skill, quality of workmanship, financial ability; factors of public health and safety; the effect of the proposed Structure or Alterations on the use, enjoyment and value of other neighboring properties, and/or on the outlook or view from adjacent or neighboring properties; and the suitability of the proposed Structure or Alterations with the general aesthetic appearance of the surrounding area.

(c) The Architectural Review Committee shall have the right to refuse to approve any such plans or specifications, including grading and location plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information as may be required by the Architectural Review Committee from time to time shall be submitted to the Architectural Review Committee by registered or certified mail or in person. In the event the Architectural Review Committee fails to approve or disapprove any plans within sixty (60) days of receipt thereof, such plans shall be deemed rejected. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Review Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. The Architectural Review Committee shall have the right to charge a processing fee, not in excess of $50.00, for such requests, which shall be retained by the Association and not the Architectural Review Committee.

(d) Construction of Alterations in accordance with plans and specifications approved by the Architectural Review Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date of approval and completed within twelve (12) months of commencement of the Alterations, or within such other period as the Architectural Review Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Review Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. After construction, all Structures and Alterations shall be maintained continuously in strict conformity with the plans and specifications so approved and all applicable laws.

(e) If any Structure is altered, erected, placed or maintained on any Lot other than in accordance with approved plans and specifications and applicable law, such action shall be deemed to be a violation of the provisions of this Declaration and, promptly after the Association gives written notice thereof to its Owner, such Structure shall be removed or restored to its condition prior to such action, and such use shall cease, so as to terminate such violation. If within thirty (30) days after having been given such notice, such Owner has not taken reasonable steps to terminate such violation, any agent of the Association may enter upon such Lot and take such steps as are reasonably necessary to terminate such violation. Such Owner shall be personally liable to

the Association for the cost thereof, to the same extent as he is liable for an Assessment levied against such Lot, and, upon the failure of the Owner to pay such cost within ten (10) days after such Owner's receipt of written demand from the Association, the Association may establish a lien upon such Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

(f) Any member of the Architectural Review Committee, upon the occurrence of a violation of the provisions of this Declaration, and after the Association or the Architectural Review Committee gives written notice thereof to the Owner of the applicable Lot, at any reasonable time, may enter upon and inspect any Lot and the exterior of any Structure thereon to ascertain whether the maintenance, construction or alteration of such Structure or Alteration are in accordance with the provisions hereof.

The provisions of this Section 2.2 shall be in addition to any applicable provisions of the Master CC&Rs relating to architectural control and approval.

2.3 **LAND USE**. The Lots, except as hereinafter provided, shall be used for private and residential purposes only and no dwelling of any kind whatsoever shall be erected, altered or maintained thereon except a private dwelling house for the sole and exclusive use of the Owner or occupant of the Lot. None of the Lots shall at any time be used for apartments or other types of multiple housing units; it being the intention of the Declarant that each and every one of the Lots be used solely for one (1) single family attached dwelling, and no other purposes, except such purposes as may be specifically reserved in the succeeding sections of this Declaration. No industry, business, trade or profession of any kind, whether or not for profit, shall be conducted, maintained or permitted on any part of the Property, except that any part of any Structure now or hereafter erected on any Lot may be used as an office or studio, provided that (i) the person using such office or studio actually resides in the Structure in which such office or studio is located, (ii) such office or studio is operated in full compliance with all applicable zoning and other laws, (iii) the operation of such office or studio does not involve the employment of any more than one (1) non-resident employee, (iv) the person owning such Lot has obtained the prior written approval of the Architectural Review Committee, and (v) such office or studio does not occupy more than twenty-five percent (25%) of the total floor area of such Structure.

2.4 **SWIMMING POOLS**. No swimming pools, whether "in ground", "above ground" or other type, shall be permitted on any Lot.

2.5 **TEMPORARY STRUCTURES**. No Structure of a temporary character, trailer, basement, tent, shack, garage, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

2.6 **REAL ESTATE SALES OR CONSTRUCTION OFFICE**. Notwithstanding anything contained herein to the contrary, a real estate sales or construction office or a trailer and/or model home and related signs, may be erected, maintained and operated on any Lot, or in any Structure now or hereafter located thereon, provided such office or trailer, and signs, are used and operated only in connection with the development and/or initial sale of any Lot or Lots, and/or the initial construction of improvements on any Lot now or hereafter laid out or created in the Community. Nothing herein, however, shall be construed to permit any real estate sales or construction office, trailer, or sign after such initial development, sales, and/or construction is completed. Except as

expressly permitted herein above, neither any part of any Lot, nor any improvement now or hereafter erected on any Lot, shall be used for any real estate sales or construction office or trailer, nor shall any sign used in conjunction with such uses be erected.

2.7 **CLOTHES LINE**. No exterior clothes dryer, clothes pole or similar equipment shall be erected, installed or maintained on any Lot, nor shall articles of clothing, bedding, etc. be hung outside.

2.8 **TRAFFIC VIEW**. No Structure, landscaping, shrubbery or any other obstruction shall be placed on any Lot so as to block the clear view of traffic on any streets.

2.9 **FRONT LAWN**. The area within the front of a dwelling shall be kept only as a lawn for ornamental or decorative planting of grass, trees and shrubbery.

2.10 **NEAT APPEARANCE**. Except as provided in Section 6.4 below, Owners shall, at all times, maintain their Lots and all appurtenances thereto in good repair and in a state of neat appearance, including but not limited to, the seeding, watering and mowing of all lawns and yards keeping all sidewalks, if any, neat, clean and in good repair, and free of ice and snow, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all Structures on the Lot, all in a manner and with such frequency as is consistent with good property management and maintenance. In addition, unless otherwise provided in this Declaration, each Owner shall maintain in good condition the exterior of their Dwellings including, without limitation, the roof, unless any such responsibility is assumed by the Association in writing and/or as provided by applicable law. If, in the opinion of the Architectural Review Committee, any Owner fails to perform the duties imposed hereunder, the Association, on affirmative action of a majority of the Board of Directors, after fifteen (15) days written notice to such Owner to remedy the condition in question, and upon failure of the Owner to remedy the condition, shall have the right (but not the obligation), through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot and the improvements or Structures thereon, and the cost thereof shall be a binding, personal obligation of such Owner, as an additional assessment on the Lot.

2.11 **NUISANCES**. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may become an annoyance or nuisance to the neighborhood or any adjoining property owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such properly maintained and operated devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other Structure constructed upon any Lot. No snowmobiles, go-carts, motorbikes, trail bikes, other loud-engine recreational vehicles or skateboard ramps shall be run or operated upon any Lot or upon any roadways serving the Property.

2.12 **ANIMALS**.

(a) No animals, livestock, or poultry of any kind, including pigeons, shall be raised, bred or kept on any Lot, except that two small dogs (weighing under forty-five (45) pounds each) or one (1) large dog (weighing between forty-five (45) and one-hundred (100) pounds), or two (2) cats or any other household pets, may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they are kept so as to avoid becoming a nuisance to the neighborhood or to any adjoining property owners, and do not roam unattended on the Property, and provided that not more than three (3) pets are kept by any Owner on a Lot.

Household pets shall not include miniature pigs, horses or other hybrid livestock or farm animals. Pets shall be registered, licensed and inoculated as required by law. Owners shall be responsible for the immediate clean up and removal of their pets' waste from any other Lot and the Common Area.

(b) Only Owners shall keep pets, except that a tenant may keep pets if said tenant signs a statement acknowledging the foregoing restrictions, which statement shall be provided to the Board of Directors of the Association.

2.13 **VEHICLES**.

(a) Other than private passenger vehicles, vans, trucks or permitted commercial vehicles in regular operation, no other motor vehicles or inoperable, unlicensed, unregistered, junk or junked cars or other similar machinery or equipment of any kind or nature (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Lot) shall be kept on the Property or repaired on any portions of the Property. For the purposes hereof, a vehicle shall be deemed inoperable unless it is licensed, contains all parts and equipment, including properly inflated tires and is in such good condition and repair as may be necessary for any person to drive the same on a public highway.

(b) Commercial vehicles, owned and/or operated by Owners or Owners' tenants, may be parked in designated parking spaces, to include parking overnight, provided that the such commercial vehicle is of such size that it may fit in a single parking space. Those commercial vehicles not owned or operated by Owners or Owner's tenants shall not be left parked on any part of the Property, including, without limitation, any street or Lot, longer than is necessary to perform the business function of such vehicle in the area, it being the express intention of this restriction to prevent parking of commercial vehicles not owned and/or operated by Owners or Owners' tenants upon the Property, including, without limitation, the streets or Lots in the Community, for a time greater than that which is necessary to accomplish the aforesaid business purpose.

(c) Trailers, buses, tractors or any type of recreational vehicle shall not be parked, stored, maintained or repaired on any Lot or parked upon any streets or Common Areas.

(d) Notwithstanding the above, during construction of dwellings, the Declarant and any Builder may maintain Commercial Vehicles and trailers on the Property for purposes of construction and for use as a field or sales office.

(e) No person shall operate a Vehicle in the Community other than in a safe and quiet manner and with due consideration for the rights of all Owners and occupants, or without holding a valid driver's license.

(f) Owner, or Owner's tenants, may park no more than two (2) vehicles per Dwelling owned on the Property at any time in the garage (one car) and on the driveway (one car).

2.14 **LIGHTING AND WIRING**. The exterior lighting on Lots shall be directed downward and shall not be directed outward from, or extend beyond, the boundaries of any Lot. All wiring on any Lot shall be underground.

2.15 **ANTENNAE**. No radio aerial, antenna or satellite or other signal receiving dish, or

other aerial or antenna for reception or transmission, shall be placed or kept on a Lot outside of a dwelling, except on the following terms:

(a) An Owner may install, maintain and use on its Lot one (1) (or, if approved, more than one (1)) Small Antenna (as hereinafter defined) in the rear yard of a dwelling on the Lot, at such location, and screened from view from adjacent dwellings in such a manner and using such trees, landscaping or other screening material, as are approved by the Architectural Review Committee, in accordance with Article II. Notwithstanding the foregoing terms of this subsection, (i) if the requirement that a Small Antenna installed on a Lot be placed in the rear yard of a dwelling would impair such Small Antenna's installation, maintenance or use, then it may be installed, maintained and used at another approved location on such Lot where such installation, maintenance or use would not be impaired; (ii) if and to the extent that the requirement that such Small Antenna be screened would result in any such impairment, such approval shall be on terms not requiring such screening; and (iii) if the prohibition against installing, maintaining and using more than one (1) Small Antenna on a Lot would result in any such impairment, then such Owner may install on such Lot additional Small Antennae as are needed to prevent such impairment (but such installation shall otherwise be made in accordance with this subsection).

(b) In determining whether to grant any approval pursuant to this Section, neither Declarant, the Architectural Review Committee nor the Board of Directors shall withhold such approval, or grant it subject to any condition, if and to the extent that doing so would result in an impairment; provided however, that any Small Antenna shall be placed in the rear of each dwelling, notwithstanding any other provision in this Section 2.15.

(c) As used herein, (i) "impair" has the meaning given it in 47 Code of Federal Regulations Part 1, Section 1.4000, as hereafter amended; and (ii) "Small Antenna" means any antenna (and accompanying mast, if any) of a type, the impairment of the installation, maintenance or use of which is the subject of such regulation. Such antennae are currently defined thereunder as, generally, being one (l) meter or less in diameter or diagonal measurement and designed to receive certain types of broadcast or other distribution services or programming.

2.16 **SUBDIVISION**. No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose. The provisions of this subsection shall not apply to the Declarant and, further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any person for any purpose.

2.17 **SIGNAGE**. Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" or one (1) "For Sale" signs (not larger than two feet by three feet (2' x 3') per townhouse), and except as provided elsewhere in this Article II, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or Structure. The provisions and limitations of this subsection shall not apply to any institutional first Mortgagee of any Lot who comes into possession of the Lot by reason of any proceeding, arrangement, assignment or deed in lieu of foreclosure. No signage may be placed in the common areas maintained by Master Association.

2.18 **TRASH AND OTHER MATERIALS**. No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except building material during the course of construction of any approved dwelling or other permitted Structure. No burning of trash shall be permitted on any Lot. All Owners shall place trash or other refuse into refuse containers provided by the Association at locations designated for trash deposits. Owners may not place any trash outside of such refuse containers or in any other location or container, except as designated

by the Association. The cost of refuse containers shall be included as an expense item in Annual Assessments.

2.19 **NON-INTERFERENCE WITH UTILITIES**. No Structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any drainage channels. No poles and wires for the transmission of electricity, telephone and the like shall be placed or maintained above the surface of the ground on any Lot.

2.20 **Mountain Regional Water Special District**. All Lot owners served by Mountain Regional Water Special Service District (the District) within this plat agree to abide by all of the Rules, Regulations, and other Construction related Standards and Specifications of the District, including payment of all necessary fees prior to the issuance of a building permit. Lot owners also recognize that the District's service area spans a large mountainous area with extreme vertical relief resulting in numerous pressure regulation facilities. As such, the owners recognize that fluctuations (albeit infrequent) in water pressure may pose a risk to properties served by said system. Owners agree to install and be responsible for the proper operation of any necessary pressure regulation devices to protect any plumbing facilities and fire sprinkling systems. Further, the District shall have the right to install, repair, maintain, replace, enlarge, extend, and operate their equipment above and below ground and all other related facilities within any easements identified on this plat as may be necessary or desirable in providing water services within and without the Lots identified herein, including the right of access to such facilities and the right to require removal of any obstructions including structures and trees, that may have been placed within the easements. The District may require the Lot owner to remove all structures and vegetation within the easement at the lot owner's expense, or the District may remove such structures and vegetation at the Lot owner's expense. At no time may any permanent structures, including trees and retaining walls, be placed within the easements or any other obstruction which interferes with the access and use of the easements without the prior written approval of the District. The District is further granted rights to access to any and all non-exclusive easements, including emergency or non-emergency access roads contained within this plat to enlarge and/or extend its services to any adjoining properties and plats.

2.21 **PARTY WALLS**.

(a) Each wall that is built as a part of the original construction of the dwellings upon the Lots and placed upon the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner(s) thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner(s) to call for a larger contribution from the other(s) under any rule of law regarding liability for negligence or willful acts or omissions.

(d) Notwithstanding any other provision of this section, any Owner who by its negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to each Owner's successors in title.

(f) In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party shall choose one (1) arbitrator, and such arbitrators shall jointly choose one (1) additional arbitrator, and the decision shall be by the majority of the three (3) arbitrators.

(g) The rules applicable to party walls shall also apply to any party fences.

2.22 **LEASING AND OCCUPANCY OF DWELLINGS; NO COMMERCIAL USE.** The Dwellings within the Project shall be used exclusively for residential purposes. No Unit shall be used for business or commercial activity provided, however, that nothing herein shall be deemed to prevent (a) Declarant or its duly authorized agents from using any Unit, for so long as such Unit is owned by Declarant, as sales models or property management offices, whether or not relating to the Project, or (b) any Owner or his duly authorized agent from freely renting or leasing his Unit from time to time, including nightly rentals. This Paragraph 2.22 shall be inapplicable to any Lot owned by Declarant.

2.23 **SOLAR COLLECTION SYSTEMS.** Any installation of solar panels or other solar collection systems on any Lot shall require the prior written approval of the Architectural Review Committee, provided, however, if a builder has prewired for the installation of solar panels or installed solar panels on the roof of a dwelling, then approval of the Architectural Review Committee shall not be required for the installation of such solar panels but said installation remains subject to any requirements under applicable law or the Master Association. Owner shall be required to obtain building permits from the local jurisdiction for the installation of solar panels and a copy of the building permit is to be submitted to the Architectural Review Committee prior to commencement of construction.

The foregoing use restrictions shall be in addition to any use restrictions which may be contained in any of the governing documents of the Master Association.

ARTICLE III - PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

3.1 **PROPERTY.** The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in the Community, and is described on Exhibit A attached hereto, all of which real property is referred to herein as the "Property."

3.2 **ADDITIONS TO PROPERTY.**

(a) The Declarant, its successors and assigns, shall have the right for seven (7) years from the date hereof to bring Additional Property within the scheme of this Declaration, and within the Community (the "Additional Property") without the consent of the Class A members of the Association.

(b) The additions authorized under this subsection shall be made by filing a supplemental declaration of record with respect to the Additional Property which shall extend the scheme of the Declaration to such Additional Property, and which Additional Property shall thereupon become part of the Property. Upon the filing of any supplemental declaration, Owners of Additional Property shall be subject to the same obligations and entitled to the same privileges as apply to the Owners of the Property. Such supplemental declaration may contain such complementary additions and modifications to the Declaration as may be necessary to reflect the different character, if any, of the Additional Property not inconsistent with the scheme of this Declaration. In no event, however, shall such supplemental declaration revoke, modify or add to the Covenants established by this Declaration for the Property as of the date hereof.

ARTICLE IV - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

4.1 **MEMBERSHIP**. Every Owner of a Lot that is subject to assessment shall become and be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

4.2 **CLASSES OF MEMBERSHIP**.

(a) The Association shall have two (2) classes of voting membership:

(i) **Class A**. Except for the Declarant and any Builder, which shall initially be the Class B members, the Class A members shall be all Owners holding title to one (1) or more Lots; provided, however, that any Mortgagee or any other person or entity who holds such interest solely as security for performance of an obligation shall not be a Class A member solely on account of such interest. Each Class A member shall be entitled to one (1) vote per Lot, for each Lot owned by it, in all proceedings in which action shall be taken by members of the Association.

(ii) **Class B**. The Class B members shall be the Declarant and any Builder. The Class B members shall be entitled to three (3) votes per Lot for each Lot owned by them, in all proceedings in which actions shall be taken by members of the Association. Notwithstanding anything contained herein to the contrary, each Builder shall be conclusively deemed during the Development Period:

(A) To have given the Declarant an irrevocable and exclusive proxy entitling the Declarant, at each meeting of the Membership held while such Builder holds such title, to cast the votes in the Association's affairs which such Builder holds under the foregoing provisions of this Section on each question which comes before such meeting;

(B) To have agreed with the Declarant that such proxy is given to and relied upon by the Declarant in connection with the Declarant's development, construction, marketing, sale and leasing of any or all of the Property and is coupled with an interest; and

(C) Such proxy shall cease with respect to the votes appurtenant to a Lot when a dwelling has been constructed on such Lot and legal title to such Lot is conveyed to a person who intends to occupy such dwelling as a residence.

(b) If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, holds the record title to any Lot, all of the same, as a unit, and not otherwise, shall be deemed a single member of the Association. The vote of any member comprised of two (2)

or more persons, firms, corporation, trustees, or other legal entities, or any other combination thereof, shall be cast in the manner provided for in the Articles of Incorporation and/or By-Laws of the Association, or as the several constituents may determine, but in no event shall all such constituents cast more than one (1) vote per Lot for each Lot owned by them.

4.3 **CONVERSION**. The Class B membership in the Association shall cease and be converted to Class A membership in the Association subject to being revived upon Additional Property being annexed to the Property pursuant to this Declaration, upon the earlier to occur of (i) December 31, 2020; or (ii) at such time as the total number of votes entitled to be cast by Class A members of the Association equals or exceeds the total number of votes entitled to be cast by the Class B members of the Association. If after such conversion additional property is made subject to the Declaration, then the Class B membership shall be reinstated until December 3l, 2025, or such earlier time as the total number of votes entitled to be cast by Class A members again equals or exceeds the total number of votes entitled to be cast by Class B members. The Declarant and any Builder shall thereafter remain a Class A member of the Association as to each and every Lot from time to time subject to the terms and provisions of this Declaration in which the Declarant or the Builder then holds the interest otherwise required for Class A membership. Additionally, the Declarant can at any time, in his sole and absolute discretion give up his Class B membership and immediately convert to a Class A member.

ARTICLE V - DECLARANT'S RESERVED RIGHTS AND OBLIGATIONS

5.1 **RESERVED RIGHTS OF DECLARANT**. The Association shall hold the Common Area conveyed to it pursuant to Article VI hereof and each Owner shall own its Lot subject to the following:

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Drainage and Utility Easement," "Sewer Easement," "Drainage and Sewage Easement," and "Open Space," or otherwise designated as an easement area over any road or Common Area on the Property, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat, except for the common side lines on the Lots, for the purposes of proper surface water drainage, for ingress and egress, for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located, together with the right and privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to effect such purposes. Within the aforesaid easement areas, no Structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or change the direction of the flow of drainage channels or obstruct or retard the flow of water through drainage channels. The reserved easement areas of each Lot and all improvements therein, except improvements for which a public authority or utility company is responsible, shall be maintained continuously by the Owner of the Lot.

(b) The reservation to Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to

the completion of construction and development of the project and the provision of utility services, and related services and facilities.

(c) The designation of streets, avenues, roads, courts and places upon the Plat is for the purpose of description only and not dedication, and the rights of the Declarant in and to the same are specifically reserved, and the Declarant hereby reserves unto itself, and its successors and assigns, the right to grade, regrade and improve the streets, avenues, roads, courts and places as the same may be located on the Plat, including the creation or extension of slopes, banks, or excavation in connection therewith and in the construction of and installation of drainage structures therein. The Declarant further reserves unto itself, and its successors and assigns, the bed of the roads, in fee, of all streets, avenues and public highways in the Community, as shown on the Plat.

(d) The Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Community in, over, through, upon and across any and all of the roads, streets, avenues, alleys, and open space and in, over, through, upon and across and under each and every Lot in any easement area set forth in this Declaration or as shown on the Plat. Declarant reserves unto itself, and its successors and assigns, the right to install electric meters and gas meters on the end walls of the townhouse units. Any maintenance required as a result of the installation of said meters shall be the responsibility of the Association.

(e) The Declarant further reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way or easements, including easements in the areas designated as "open space" and stormwater management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Community except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Architectural Review Committee.

(f) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any Structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope. Similarly, Declarant reserves the right unto itself, and its successors and assigns, and, without limitation, the Association, to enter on any Lot during normal business hours for the purpose of performing the maintenance obligations of the Association, as more particularly described in Section 6.4; provided, however, that Declarant shall have no obligation to perform such maintenance. No right shall be conferred upon any Owner by the recording of any plat relating to the development of the Property in accordance with such plat, Declarant expressly reserving unto itself the right to make such amendments to any such plat or plats as shall be advisable in its best judgment and as shall be acceptable to public authorities having the right to approval thereof.

(g) Declarant further reserves unto itself, for itself and any Builder and their successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Property other than those Lots conveyed to Owners, including any Common Area which may have previously been conveyed to the Association, for all purposes necessary or appropriate to the full and final completion of construction of the Community. Specifically, none of

the provisions of Article II concerning architectural control or use restrictions shall in any way apply to any aspect of the Declarant's or Builder's activities or construction, and notwithstanding any provisions of this Declaration, none of the Declarant's or Builder's construction activities or any other activities associated with the development, marketing, construction, sales management or administration of the Community shall be deemed noxious, offensive or a nuisance. The Declarant reserves the right for itself and any Builder, and their successors and assigns, to store materials, construction debris and trash during the construction period on the Property without keeping same in containers. The Declarant will take reasonable steps, and will ensure that any Builder takes reasonable steps, to avoid unduly interfering with the beneficial use of the Lots by Owners. Further, any easements shown on the Plat are hereby reserved by the Declarant and any Builder.

5.2 **INCORPORATION BY REFERENCE; FURTHER ASSURANCES**. Any and all grants made to the Association with respect to any of the Common Area and all grants made with respect to any Lots shall be conclusively deemed to incorporate the foregoing reservations, whether or not specifically set forth in such instruments. At the request in writing of any party hereto, any other party shall from time to time execute, acknowledge and deliver such further assurances of such reservations as may be necessary.

ARTICLE VI - COMMON AREA

6.1 **GRANT OF COMMON AREA**. The Association shall take title to the Common Area that is part of the Property free and clear of all encumbrances, except non-monetary title exceptions and this Declaration not later than the date the first Lot is conveyed to an Owner (other than the Declarant or a Builder). The Covenants are hereby imposed upon the Common Area for the benefit of the Declarant, the Builder, the Association and the Owners, and their respective personal representatives, successors and assigns, to the end and intent that the Association shall have and hold the said Common Area subject to the reservations set forth in Article V hereof, and to the Covenants herein set forth.

6.2 **MEMBER'S RIGHT OF ENJOYMENT**. Every member of the Association shall have a non-exclusive right and easement for the use, benefit and enjoyment, in common with others, in and to the Common Area and such non-exclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth. Except as otherwise permitted by the provisions of this Declaration, the Common Area shall be retained in its natural state, and no Structure or improvement of any kind shall be erected, placed or maintained thereon. Structures or improvements designed exclusively for community use, shelters, benches, chairs or other seating facilities, fences and walls, walkways, playground equipment, game facilities, drainage and utility structures, grading and planting, may be erected, placed and maintained thereon for the use, comfort and enjoyment of the members of the Association, or the establishment, retention or preservation of the natural growth or topography of the area, or for aesthetic reasons. No portion of the Common Area may be used exclusively by any Owner or Owners for personal vegetable gardens, storage facilities or other private uses.

6.3 **NUISANCE**. No noxious or offensive activity shall be carried on upon the Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the Community.

6.4 **MAINTENANCE OBLIGATIONS OF THE MASTER ASSOCIATION AND ASSOCIATION**.

(a) It is contemplated that the Master Association shall undertake all

maintenance and repair of the Common Area and Lots including everything outside the footprint of the structure the exterior areas, landscaping (grass cutting and shrubbery), walkways, parking and driveways as well as snow removal, except as otherwise provided in this Declaration. However, in the event the Master Association does not perform all of the foregoing maintenance and repair, then in such event, the Association shall perform such maintenance and repair and in such event shall levy against each member of the Association a proportionate share of the aggregate cost and expense thereof, which proportionate share shall be determined based on the ratio which the number of Lots owned by the member bears to the total number of Lots then laid out or established on the Property.

(b) The Association shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Area for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Association may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Association may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Assessment shall not be subject to the limitations set forth in Section 8.5 hereof. If the current replacement value of the major components of the Common Area which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the total budgeted common expenses for any fiscal year and/or if required by applicable law, then at least once every six (6) years, the Association (or Master Association, as applicable) shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Association (or Master Association, as applicable) shall, thereafter, review the reserve account study at least every three (3) years and shall consider and implement necessary adjustments to the reserve account requirements and funding as a result of that review. Any reserve account study shall include, at minimum:

i. Identification of the major components which the Association is obligated to repair, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.
ii. Identification of the probable remaining useful life of the items identified in subparagraph (i) above, as of the date of the study.
iii. An estimate of the cost of repair, replacement, restoration or maintenance of each item identified in subparagraph (i) above, during and at the end of its useful life.
iv. An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each item during and at the end of its useful life, after subtracting total reserve funds as of the date of study.

For the purpose of this Section, the term "reserve account requirements" means the estimated funds which the Association has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain.

6.5 **RESTRICTIONS**. The right of each member of the Association to use the Common Area shall be subject to the following:

(a) any rule or regulation now or hereafter set forth in this Declaration and, further, shall be subject to any rule or regulation now or hereafter adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area;

(b) the right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area in a manner designed to promote the enjoyment and welfare of the members, and in aid thereof to mortgage any of the Common Area;

(c) the right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosure;

(d) the right of the Association to suspend the voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the published rules and regulations of the Association or of this Declaration;

(e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; and further subject to the written consent of Summit County; provided, however, that no dedication, transfer, mortgage or determination as to the purposes or as to the conditions thereof, shall be effective unless two-thirds (2/3) of the Class A members (excluding the Declarant if the Declarant is a Class A member) of the Association consent to such dedication, transfer, purpose and conditions; and

(f) the right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other person; provided, however, that no such license, right-of-way or easement shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the Common Area.

(g) All of the foregoing shall inure to the benefit of and be enforceable by the Association and the Declarant, or either of them, their respective successors and assigns, against any member of the Association, or any other person, violating or attempting to violate any of the same, either by action at law for damages or suit in equity to enjoin a breach or violation, or enforce performance of any term, condition, provision, rule or regulation. Further, the Association and the Declarant shall each have the right to abate summarily and remove any such breach or violation by any member at the cost and expense of such member.

In addition to the foregoing, a portion of the Common Area shall be subject to that certain Parking and Maintenance Agreement dated November 8, 2011 and recorded February 23, 2012 as Entry No. 939968 in Book 2116 at page 1428 et seq. in the Official Records of Summit County, Utah ("Parking Agreement"). Among other things, the Parking Agreement provides for twelve (12) parking spaces to be used by owners/occupants of property located within the Master Association. A copy of the Parking Agreement is attached hereto as Exhibit C.

6.6 **DELEGATION OF RIGHT OF USE**. Any member of the Association may delegate its

rights to the use and enjoyment of the Common Area to family members who reside permanently with such member and to its tenants, contract-purchasers, invitees and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.

6.7 **RULES AND REGULATIONS.**

(a) The Board of Directors may adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce the rules and design criteria of the Association, subject to the limitation on rules in Utah Code Sections 57-8a-218 and 57-8a-219.

(b) Except as provided in Subsection (c) below, before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the rules and design criteria of the association, the Board of Directors shall:

(1) at least 15 days before the Board of Directors will meet to consider a change to a rule or design criterion, deliver notice to Owners that the Board of Directors is considering a change to a rule or design criterion; (2) provide an open forum at the Board of Directors meeting giving lot owners an opportunity to be heard at the board meeting before the Board of Directors takes action; and (3) deliver a copy of the change in the rules or design criteria approved by the Board of Directors to the Owners within 15 days after the date of the Board of Directors meeting.

(c) The Board of Directors may adopt a rule without first giving notice to the Owners under Subsection (b) if there is an imminent risk of harm to Common Area, an Owner, an occupant of a Lot, a Lot, or a dwelling. The Board of Directors shall provide notice under Subsection (b) to the Owners of a rule adopted under this Subsection (c).

(d) A Board of Directors action in accordance with Subsections (a), (b), and (c) is disapproved if within 60 days after the date of the Board of Directors meeting where the action was taken: (a) (i) there is a vote of disapproval by at least 51% of all the allocated voting interests of the Owners; and (ii) the vote is taken at a special meeting called for that purpose by the Owners; or (b) (i) the Declarant delivers to the Board of Directors a writing of disapproval; and (ii) (A) the Declarant is within the Development Period; or (B) the Declarant has the right to add real estate to the project.

(e) The Board of Directors has no obligation to call a meeting of the Owners to consider disapproval, unless Owners submit a petition, in the same manner as the declaration, articles, or bylaws provide for a special meeting, for the meeting to be held. Upon the Board of Directors receiving a petition under this Subsection (e), the effect of the Board of Directors' action is: (i) stayed until after the meeting is held; and (ii) subject to the outcome of the meeting.

(f) During the Development Period, the Declarant is exempt from the Association rules and the rulemaking procedure.

(g) Each Owner shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Common Area, as such rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area. Further, each Owner shall comply with the Covenants imposed by this Declaration on the use and enjoyment of the Common Area.

ARTICLE VII - ENCROACHMENTS

If any Structure or any part thereof, now or at any time hereafter, encroaches upon an adjoining Lot or any Structure encroaches upon any Common Area, whether such encroachment is attributable to construction, settlement or shifting of the Structure or any other reason whatsoever beyond the control of the Board of Directors or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue. The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular reference to such easement.

ARTICLE VIII - COVENANT FOR ASSESSMENT

8.1 **COVENANT FOR ASSESSMENT**. The Declarant for each Lot owned by it within the Property, hereby covenants, and each Owner, by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in such deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association (a) in advance, an annual assessment (the "Annual Assessment") equal to the member's proportionate share of the sum required by the Association, as estimated by the Board of Directors, for annual assessments or charges, and (b) special assessments or charges, for capital improvements, such annual and special assessments and charges to be established and collected as hereinafter provided. The annual and special assessments or charges shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article VIII and shall be construed as a real covenant running with the land. Such assessments or charges, together with interest at a rate of twelve percent (12%) per annum, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment fell due or was payable. The personal obligation for any delinquent assessment or charge, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

8.2 **USE OF ASSESSMENTS**. The assessments and charges levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community, and in particular for: (a) the improvement and maintenance, operation, care, services and facilities related to the use and enjoyment of the Common Area as well as fees paid to any management agent; (b) the payment of taxes on the Common Area (except to the extent that proportionate shares of such public charges and assessments on the Common Area may be levied against all Lots laid out on the Property by the tax collecting authority so that the same is payable directly by the Owners thereof, in the same manner as real property taxes are assessed or assessable against the Lots); (c) the payment of insurance premiums on the Common Area; (d) the costs of repair, replacement and additions to the Common Area and improvements thereon, if applicable; (e) the cost of obtaining, planting and thereafter maintaining street trees throughout the Community if required by Summit County, whether or not such street trees are located in the Common Area; (f) the costs of utilities and other services which may be provided by the Association for the Community as may be approved from time to time by a majority of the members of the Association; (g) the cost of labor, equipment, insurance, materials, management and supervision incurred or expended in performing all of the foregoing; (h) the cost of refuse containers, as described in Section 2.19, if applicable; (i) the cost of semi-annual maintenance for blowouts on the

ends of the water lines serving the Community, as referenced in Section 6.4, if applicable; (j) the cost of maintenance, insurance and replacement of any covered parking; and (k) the cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements, if applicable.

8.3 **ANNUAL ASSESSMENT**.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than the Declarant or a Builder, the annual assessment shall be the aggregate of $2,700.00 for each Lot, payable at the rate of $225.00 per month and as shown on Exhibit 'B' Nevis at Newpark Homeowners Association Budget for 2014-2015.

(b) From and after such date, the annual assessment may be increased each year by not more than fifteen percent (15%) of the annual assessment for the previous year without a vote of the membership of the Association.

(c) From and after such date the annual assessment may be increased above the fifteen percent (15%) limitation specified in the preceding sentence only by a vote of two-thirds (2/3) of each class of members of the Association, voting in person or by proxy, at a meeting duly called for such purpose. This proxy does not apply to the assessment of the Master Association.

(d) For any Lot upon which Declarant or Builder holds title to a completed Dwelling, which Dwelling shall have had a use and occupancy permit issued six (6) months prior, Declarant or Builder shall pay the assessments or charges described herein with the following allowance in each instance: annual assessments or charges made or levied against any Lot to which the Declarant or Builder hold record title shall equal twenty-five percent (25%) of the annual assessment or charge made or levied against any other Lot laid out on the Property, to the end and intent that the Declarant or Builder shall not pay more, or less, than twenty-five percent (25%) of the per Lot annual assessment established by the Association under this Section. For any Lot upon which no Dwelling has been constructed or no use and occupancy permit has yet aged six (6) months, and for any Lot upon which models are constructed by Declarant or Builder until such model is converted to residential use, no assessment or charge shall be made or levied by the Association, except for changes to the Master Association.

8.4 **INITIAL CAPITAL CONTRIBUTION.** To ensure adequate funds to meet the initial operating expenses of the Association, each Owner other than Declarant and Builder shall pay to the Association an amount equal to two (2) months of the amount of the then annual Regular Assessment for that Lot as of the date of closing, as determined by the Board of Directors of the Association. In addition to the foregoing, during the Development Period, Declarant has the right, but not the obligation, to make loans from time to time to the Association if Declarant deems the same to be appropriate, in its sole and absolute discretion, to enable the Association to pay all debts and maintain sufficient cash flow. If any such loans are made, repayment will be made to the Declarant, on such terms as Declarant may require, from time to time, and be paid from the Initial Capital Contribution, as determined in the sole discretion of the Board of Directors of the Association. The amounts set forth herein are not to be considered in lieu of annual Regular Assessments or any other Assessments levied by the Association.

8.5 **SPECIAL ASSESSMENTS**. In addition to the annual assessments authorized above,

the Association may levy in any assessment year, a special assessment, applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located on the Common Area, including fixtures and personal property related thereto, and/or to meet any other deficit of the Association or any emergency or unforeseen expenses of the Association; provided that such assessment shall first be approved by two-thirds (2/3) of the votes of the members of the Association, voting in person or by proxy at a meeting duly called for such purpose.

8.6. **MASTER ASSESSMENTS.** To the extent allowable under the governing documents of the Master Association (including, without limitation, the Master CC&Rs), each Owner shall pay to the Association such Owner's share of the amounts due to the Master Association under the governing documents of the Master Association and the Association shall remit such sums to the Master Association. The amounts due to the Master Association shall be included in the Annual Assessment paid to the Association.

8.7 **NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 8.3 AND 8.4**. Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Sections 8.3 and 8.4 of this Article shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all of the votes of each class of members entitled to be cast at such a meeting shall be necessary and sufficient to constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.8 **COMMENCEMENT DATE OF ANNUAL ASSESSMENTS.**

(a) The Annual Assessments as to any Lot shall commence on the earlier of (i) the date the Lot is conveyed to any person or entity other than the Declarant or a Builder or (ii) the date a Use and Occupancy Permit is issued by the proper authorities of Summit County to the Declarant or a Builder. The annual assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, and shall be a lien for any month after the fifteenth (15th) day of that month.

(b) The due date of any special assessment under Section 8.4 shall be fixed in the resolution authorizing such special assessment.

8.9 **DUTIES OF THE BOARD OF DIRECTORS**.

(a) The Board of Directors shall determine the amount of the maintenance assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of annual assessments may be levied and collected on a monthly, semi-annual or annual basis rather than on the monthly basis herein above provided for. Any member may prepay one or more installments of any maintenance assessment levied by the Association, without premium or penalty.

(b) At least annually the Board of Directors shall prepare and adopt a budget for the Association. The Board of Directors shall present the adopted budget to the Owners at a meeting of the Owners for the management, operation and maintenance of the Common Area. A

budget is disapproved if within 45 days after the date of the meeting at which the Board of Directors presents the adopted budget: (1) there is a vote of disapproval by at least 51% of all the allocated voting interests of the Owners; and (2) the vote is taken at a special meeting called for that purpose by Owners under this Declaration, the Articles, or the Bylaws. If a budget is disapproved, the budget that the Board of Directors last adopted that was not disapproved by Owners continues as the budget until and unless the Board of Directors presents another budget to Owners and that budget is not disapproved. During the Development Period, Owners may not disapprove a budget. Written notice of the annual maintenance assessments shall thereupon be sent to all members of the Association. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any member from the obligation to pay the annual maintenance assessment, or any installment thereof, for that or any subsequent assessment period; but the annual maintenance assessment fixed for the preceding period shall continue until a new maintenance assessment is fixed. No member may exempt itself from liability for maintenance assessments by abandonment of any Lot owned by such member or by the abandonment of such member's right to the use and enjoyment of the Common Area.

(c) The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer, or manager, of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A charge not to exceed ten dollars ($10.00) may be levied in advance by the Association for each certificate so delivered.

8.10 **ADDITIONAL ASSESSMENTS**. Additional assessments may be fixed against any Lot only as provided for in this Declaration. Any such assessments shall be due as provided by the Board of Directors in making any such assessment.

8.11 **NONPAYMENT OF ASSESSMENT**. Any assessment or portion thereof not paid within thirty (30) days after the due date thereof shall be delinquent and shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and shall be subject to a late charge of Fifty Dollars ($50.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater, and the Board of Directors shall have the right to declare the entire balance of the assessment and accrued interest thereon to be immediately due and payable. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or without waiving any other right, at equity to foreclose the lien against the Lot in the same manner and subject to the same requirements as are specified by the law of Utah for the foreclosure of mortgages or deeds of trust containing a power of sale or an assent to a decree, and there shall be added to the amount of such assessment the reasonable costs of preparing and filing the complaint of such action, and in the event that judgment is obtained, such judgment shall include interest on the assessment as above provided, late fees and reasonable attorneys' fees to be fixed by the court together with the cost of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

8.12 **SUBORDINATION OF LIEN TO MORTGAGE**. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage(s) or deed(s) of trust now or hereafter placed upon the Lot subject to assessment; provided, however, that the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve such Lot from liability for any assessments

thereafter becoming due, nor from the lien of any such future assessment.

8.13 **ENFORCEMENT OF LIEN; APPOINTMENT OF TRUSTEE.**

(a) The Association may establish and enforce the lien for any assessment, annual, special, or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which such assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for herein or awarded by a court for breach of any of the covenants herein.

(b) Each Owner by accepting a deed to a Lot hereby irrevocably appoints and accepts US Title Company of Utah or its successor or assign, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, as amended (including Subsection 57-1-21(1)(a)(i) or (iv). In addition, each Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein. Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to US Title Company of Utah or its successor or assign, with power of sale, the Lots and all improvements to the Lots for the purpose of securing payment of assessments under the terms of this Declaration.

8.14 **EXEMPT PROPERTY**. The Common Area and all Lots owned by the Association or dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah shall be exempt from the assessments created herein.

8.15 **RESERVES FOR REPLACEMENTS**.

(a) To the extent any of the Common Area is not maintained by the Master Association, then in such event, the Association shall establish and maintain a reserve fund for repairs and replacements of the such Common Area by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(b) The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member of the Association in any such reserves shall be considered an appurtenance of such Owner's Lot and shall not be separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

ARTICLE IX - INSURANCE AND CASUALTY LOSSES

9.1 **TYPES OF INSURANCE MAINTAINED BY ASSOCIATION**. During the Development Period, the Association or Declarant (in Declarant's sole discretion), shall obtain the following types of insurance:

(a) blanket property insurance or guaranteed replacement cost insurance on the physical structure of all attached dwellings, limited common areas appurtenant to a dwelling on a lot, and common areas in the project, insuring against all risks of direct physical loss commonly insured against, including fire and other hazards and extended coverage perils, vandalism, and

malicious mischief in an amount sufficient to cover the full replacement cost of such improvements in the event of damage or destruction. Property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to an attached dwelling or to a limited common area appurtenant to a dwelling on a lot, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to an attached dwelling or to a limited common area. The total amount of coverage provided by blanket property insurance or guaranteed replacement cost insurance may not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding items normally excluded from property insurance policies;

(b) a public liability insurance policy covering the Association, its officers, directors and managing agents, which shall include coverage without limitation, for any employee or other agent of Declarant which serves in such capacity having at least a Five Hundred Thousand Dollar ($500,000) limit per total claims that arise from the same occurrence, including but not limited to liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas and any of the recreational facilities located in the Community, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;

(c) workers' compensation insurance, if and to the extent required by law; and

(d) fidelity bond or bonds covering all Directors, officers, employees, managers and other persons handling or responsible for the funds of the Association, in such amounts as the Board of Directors deems appropriate, which shall include coverage without limitation, for any employee or other agent of Declarant which serves in such capacity and shall be made a party by reason of his or her services.

After the conclusion of the Development Period, the Board of Directors shall have the obligation to and shall obtain the insurance described above. If the Board of Directors becomes aware that property insurance under Subsection (a) or liability insurance under Subsection (b) above is not reasonably available, the Board of Directors shall, within seven calendar days after becoming aware, give all Owners notice, as provided in Utah Code Section 57-8a-214, that the insurance is not reasonably available.

9.2 **PREMIUMS FOR INSURANCE MAINTAINED BY ASSOCIATION**. Premiums for all insurance and bonds required to be carried under Section 9.1 hereof or otherwise obtained by the Association on the Common Area shall be an expense of the Association, and shall be included in the annual assessments. Premiums on any fidelity bond maintained by a third party manager shall not be an expense of the Association. The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or, if the policy deductible exceeds $10,000, an amount not less than $10,000. The Association shall provide notice in accordance with Utah Code Section 57-8a-214 to each Owner of the Owner's obligation for the Association's policy deductible and of any change in the amount of the deductible.

9.3 **DAMAGE AND DESTRUCTION OF COMMON AREA**.

(a) Immediately after any damage or destruction by fire or other casualty to all

or any part of the insurable improvements on the Common Area, the Board of Directors, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to insurable improvements on the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the members present at a meeting of the membership held within ninety (90) days after the casualty shall decide not to repair or reconstruct.

(c) If, in accordance with subsection (b), the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the members, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Board of Directors, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.

9.4 **REPAIR AND RECONSTRUCTION OF COMMON AREA**. If any improvements on the Common Area are damaged or destroyed, and the proceeds of insurance received by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Directors shall, without the necessity of a vote of the members, levy a special assessment against all Owners in order to cover the deficiency in the manner provided in Article VIII hereof. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Directors shall determine.

9.5 **HAZARD INSURANCE ON IMPROVED LOTS**. Each Owner of an improved Lot may also maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance.

9.6 **OBLIGATION OF LOT OWNER TO REPAIR AND RESTORE**.

(a) In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the Declarant or the Architectural Review Committee; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the Architectural Review Committee and obtain its approval prior to commencing the repair, restoration or replacement.

ARTICLE X - RIGHTS OF MORTGAGEES

10.1 **GENERAL**.

(a) Regardless of whether a Mortgagee in possession of a Lot is its Owner, (i) such Mortgagee in possession shall have all of the rights under the provisions of this Declaration, the Plat, the Articles of Incorporation, the By-Laws and applicable law, which would otherwise be held by such Owner, subject to the operation and effect of anything to the contrary contained in its Mortgage, and (ii) the Association and each other Owner or person shall be entitled, in any matter arising under the provisions of this Declaration and involving the exercise of such rights, to deal with such Mortgagee in possession as if it were the Owner thereof.

(b) Any Mortgagee in possession of a Lot shall (subject to the operation and effect of the provisions of this Declaration, the Articles of Incorporation, the By-Laws and applicable law) bear all of the obligations under the provisions thereof which are borne by its Owner; provided, that nothing in the foregoing provisions of this Section shall be deemed in any way to relieve any Owner of any such obligation, or of any liability to such Mortgagee on account of any failure by such Owner to satisfy any of the same.

10.2 **INSPECTION; STATEMENT AND NOTICE**. A Mortgagee shall, upon delivery of a written request to the Association, be entitled to

(a) inspect the Association's books and records during normal business hours;

(b) receive an annual financial statement of the Association within ninety (90) days after the end of any fiscal year of the Association;

(c) be given timely written notice of all meetings of the Membership, and designate a representative to attend all such meetings;

(d) be given timely written notice of the occurrence of any substantial damage to or destruction of the Common Area, or if the Common Area is made the subject of any condemnation or eminent domain proceeding or the acquisition thereof is otherwise sought by any condemning authority; and

(e) be given timely written notice by the Association of failure to pay assessments by the Owner of such Mortgagee's Lot which is not cured within thirty (30) days after such default commences, but the failure to give such notice shall not affect the validity of the lien for any assessments levied pursuant to this Declaration.

10.3 **APPROVAL BY FEDERAL HOUSING ADMINISTRATION AND VETERANS ADMINISTRATION**. Until the Class B membership terminates pursuant to the provisions of Article IV, Section 4.3, the consent or approval of the Federal Housing Administration, the Veterans Administration and/or the Department of Housing and Urban Development shall be obtained with respect to any of the following actions taken while a Mortgage is in effect which is insured by such entity:

(a) a dedication of any portion of the Common Area to public use;

(b) an amendment of this Declaration; and

(c) annexation of additional properties.

ARTICLE XI - MISCELLANEOUS

11.1 **TERM**. This Declaration shall run with the land and shall be binding for a period of fifty (50) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each unless and until an instrument has been recorded, by which this Declaration, in whole or in part, is amended, modified or revoked pursuant to the provisions of Section 11.9.

11.2 **ENFORCEMENT**.

(a) Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain the violation or to recover damages, or both. In acquiring title to any Lot in the Community, the purchaser or purchasers violating or attempting to violate any covenant, agree to reimburse the Association and/or any Owners for all costs and expenses for which it or they may be put as a result of the said violation or attempted violation, including but not limited to, court costs and attorneys' fees.

(b) These Covenants shall inure to the benefit of and be enforceable by the Association or by the Owner(s) of any land included in the Community and their respective legal representatives, successors and assigns, and all persons claiming by, through or under them.

11.3 **NO WAIVER**. The failure or forbearance by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.4 **INCORPORATION BY REFERENCE ON RESALE**. In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall be deemed to contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration, whether or not the deed actually so states.

11.5 **NOTICES**. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage paid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

11.6 **NO DEDICATION TO PUBLIC USE**. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Area by any public or municipal agency, authority or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Area.

11.7 **SEVERABILITY**. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

11.8 **CAPTIONS AND GENDERS**. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

11.9 **AMENDMENT**.

(a) For so long as there is a Class B membership of the Association, this Declaration may be amended by an instrument in writing, signed and acknowledged by the Declarant and by the President or Vice-President and Secretary or Assistant Secretary of the Association after approval of the amendment at a meeting of the Association duly called for such purpose. The vote (in person or by proxy) or written consent of at least two-thirds (2/3) of the Association shall be required to add to, amend, revise or modify this Declaration. Following the lapse of the Class B membership in the Association, as provided in Article IV hereof, this Declaration may be amended by an instrument in writing, signed and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association with the approval, in the manner set forth above, of at least two-thirds (2/3) of the Class A members of the Association at a meeting of the Association duly called for such purpose.

(b) An amendment or modification shall be effective when executed by the President or Vice-President and Secretary or Assistant Secretary of the Association who shall certify that the amendment or modification has been approved as herein above provided. The amendment shall be recorded in the Recorder's Office of Summit County. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording. For the purpose of recording such instrument, each Owner, other than the Declarant, hereby grants to the president or Vice-President and Secretary or Assistant Secretary of the Association an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording said instrument. Notwithstanding anything to the contrary contained herein, in no event may any of Declarant's rights or privileges under the Articles of Incorporation or By-Laws of the Association or this Declaration be terminated, altered or amended without Declarant's prior written consent.

11.10 **MASTER ASSOCIATION**.

(a) The Lots are also part of the Master Association and all of the Lots and any Common Area are encumbered by and subject to all of the covenants, conditions, restrictions and easements set forth in the Master CC&Rs. As provided above in this Declaration, the Master Association is responsible for maintaining and repairing the areas outside of the exterior walls of the Dwelling including lawn care and landscaping of the yards surrounding the Dwellings but excluding the decks located on the main living area of any Dwelling.

(b) Intentionally omitted

(c) Membership in the Master Association shall subject each Owner to certain assessments and fees levied by the Master Association as provided in the Master CC&Rs. These assessments and fees are included in any and all assessments which may be levied by the Association as provided herein. To the extent provided above, the Association may collect from each Owner such Owner's share of the assessments due to the Master Association and thereafter shall remit such amounts directly to the Master Association.

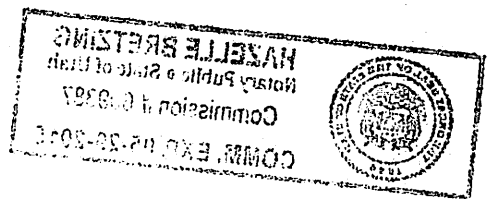
(d) The Lots and all Owners are bound by and subject to all of the use restrictions contained in the Master CC&Rs and/or in the rules and regulations from time to time promulgated by the Master Association. The use restrictions are in addition to those contained in this Declaration.

(e) While parking on properties contiguous to the Project may be available from

time to time, there is no guarantee that parking on properties contiguous to the Project will be available in the future. Parking which is available for Owners, tenants and guests within the SPA (as such term is defined in the Master CC&Rs) may be used by others as well. Parking is provided for cars and non-commercial trucks. Parking is not to be used for trailers, boats, motor homes, snowmobiles and other recreation vehicles and commercial vehicles. The Master Association will regulate parking privileges and no parking is allowed on the streets.

(f) In the event of a conflict between any of the governing documents of the Master Association and the provisions of any of the governing documents of the Association, the provisions of the Master Association documents shall supersede the provisions of the Association's documents, to the extent of such conflict, unless prohibited by applicable law.

- Signature Page Follows -


HAZELLE BRETSINS
Notary Public • State of Utah
Commission #
COMM. EXP.

WITNESS the hand and seal of the Declarant hereto on the day herein above first written.

WITNESS/ATTEST:

DECLARANT:
NEVIS AT NEWPARK LLC
By: Hamlet Homes Corporation
Its Manger

_____

By: _____

STATE OF UTAH, CITY/COUNTY OF SALT LAKE, TO WIT:

I HEREBY CERTIFY that on this 2 day of October 2014 before, me, the subscriber, a Notary Public of the State of Utah, personally appeared John Aldous, known to me or suitably proven, who acknowledged himself to be the President of Hamlet Homes Corporation, the Manager of Nevis at Newpark LLC, the Declarant named in the foregoing Declaration of Covenants, Conditions and Restrictions, and who, being authorized to do so, in my presence, signed and sealed the same and acknowledged the same to be the act and deed of the Declarant.

AS WITNESS my hand and seal.

HAZELLE BRETZING
Notary Public • State of Utah
Commission # 609387
COMM. EXP. 05-29-2015

_____
Notary Public

My Commission Expires: 5/29/15

CONSENT AND AGREEMENT OF TRUSTEE AND BENEFICIARY

US Title Company of Utah and Bank of Utah, are, respectively, the Trustee and the Beneficiary under the official records of Summit County, Utah hereby join in the foregoing Declaration of Covenants, Conditions and Restrictions for the express purpose of subordinating all of their respective right, title and interest under such Deed of Trust in and to the real property described in Exhibit A such to the operation and effect of such Declaration.

Nothing in the foregoing provisions of this Consent and Agreement of Trustee and Beneficiary shall be deemed in any way to create between the person named in such Declaration as "the Declarant" and any of the undersigned any relationship of partnership or joint venture, or to impose upon any of the undersigned any liability, duty or obligation whatsoever.

IN WITNESS WHEREOF, the Trustee and Beneficiary have executed and sealed this Consent and Agreement of Trustee and Beneficiary or caused it to be executed and sealed on its behalf by its duly authorized representatives, this 2 day of October 2014.

WITNESS/ATTEST:

_____

TRUSTEE:

US Title

_____(SEAL)

By: Larry Burton

Its: President

WITNESS/ATTEST:

_____

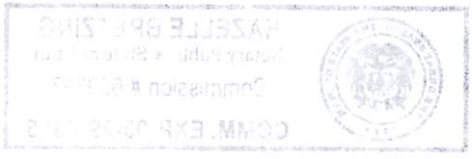
BENEFICIARY:

BANK OF UTAH

_____(SEAL)

By:

Its: SVP




Notary Public
DENIECE REYES
Commission #675279
My Commission Expires
March 3, 2018
State of Utah

STATE OF UTAH: COUNTY OF Salt Lake **: TO WIT:**

I HEREBY CERTIFY that on this 2 day of October, 2014, before me, a Notary Public for the state aforesaid, personally appeared Larry Burton, (title) President known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he has executed it on behalf of the Trustee for the purposes therein set forth, and that it is his act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

HAZELLE BRETZING
Notary Public • State of Utah
Commission # 609387
COMM. EXP. 05-29-2015

Notary Public

My commission expires on 5/29/15.

STATE OF UTAH, COUNTY OF Salt Lake **: TO WIT:**

I HEREBY CERTIFY that on this 8th day of October, 2014, before me, a Notary Public for the state aforesaid, personally appeared Cari Fullerton, (title) Senior Vice President, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he/she has executed it as Beneficiary for the purposes therein set forth, and that it is his/her act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

Notary Public

My commission expires on March 3, 2018.

Notary Public
DENIECE REYES
Commission #675279
My Commission Expires
March 3, 2018
State of Utah

EXHIBIT A

Description of the Property

Nevis at Newpark Subdivision
Lots 1 thru 23 inclusive
Entry No. 102144, State of Utah
County of Summit, Recorded 09.04.2011 at 1:45pm

EXHIBIT B

Nevis at Newpark Homeowners Association
Budget for 2014-2015

Nevis HOA
Budget for 2014-2015

Townhomes 23

	Per Year	Per Month
Management:		
Mgmt/ Clerical/Acc't Fees:	$ 450.11	$ 19.57
Liability & Homeowners Insurance: ($2,500.00 deductible and includes Directors coverage)	$ 7,000.00	$ 25.36
Services:		
High speed internet & TV	$ 12682.20	$ 45.95
Reserve Study ($1,380 every 3 years) (includes $1380 for study due to transition event)	$ 1,380.00	$ 5.00
Tax preparation fee	$ 400.00	$ 1.45
Miscellaneous	$ 1,622.88	$ 2.54
Payment to NOA for Maintenance & Capital Reserves		
The 2014 NOA Budget assessment	$ 32,495.77	$ 121.50`

The following items are included in the yearly NOA budget

Lawn service & maintenance
Water for irrigation of lawn
Trash removal and maintenance of Dumpster enclosure
Trash removal (Patios and decks is the responsibility of the homeowner)
Snow is removed from the driveway by the NOA
Common areas Sidewalk & Parking space replacement

Capital Reserves		
Future landscape replacement ($10,000.00 over a 10 year period)	$ 1,000.00	$ 3.63
Total Monthly Dues:		**$ 225.00**

"EXHIBIT C"

Parking and Maintenance Agreement

WHEN RECORDED, RETURN TO:

Steven E. Tyler, Esq.
HOLLAND & HART, LLP
222 South Main Street, Suite 2200
Salt Lake City, Utah 84101

ENTRY NO. 00939968
02/23/2012 01:35:09 PM B: 2116 P: 1428
Agreement PAGE 1/15
ALAN SPRIGGS, SUMMIT COUNTY RECORDER
FEE 39.00 BY HIGH COUNTRY TITLE

PARKING AND MAINTENANCE AGREEMENT

THIS PARKING AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of the 8th day of November 2011, by and among ESNET PROPERTIES, L.C., a Utah limited liability company ("ESNET"), NEWPARK CORPORATION, a Utah corporation ("Newpark"), RETAIL AT NEWPARK, LC, a Utah limited liability company ("RAN"), and NEWPARK OWNERS ASSOCIATION, INC., a Utah nonprofit corporation (the "Association"). ESNET, Newpark, RAN and the Association are sometimes collectively referred to below as the "Parties" and, individually, as a "Party."

RECITALS:

A. Newpark is the master developer of a mixed-use real estate development located in Summit County, Utah, known as the Newpark Development (the "Development").

B. ESNET has acquired from Newpark or its affiliate title to a portion of the land within the Development, commonly referred to as Parcel P of Newpark Subdivision ("Parcel P"), which Parcel P is more particularly described on the attached Exhibit "A" and incorporated herein by reference, and which Parcel P is comprised of "Parcel P-1" and "Parcel P-2", as shown on the site plan attached hereto as Exhibit "B" and incorporated herein by reference (the "Site Plan").

C. RAN is the owner of that certain real property located immediately adjacent to Parcel P shown as the "Transition Property" on the Site Plan.

D. The Development is subject to the terms and provisions of that certain Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions of Newpark Owners Association, Inc., dated August 18, 2006 and recorded on August 31, 2006 in Book 1814 at Pages 1035 through 1063 of the official records of Summit County, Utah (the "CCRs"). The undefined capitalized terms used in this Agreement shall have the meanings ascribed to such terms in the CCRs.

E. Under the terms of the CCRs, the Association is obligated to maintain the Common Areas of the Development, which include the roadways, sidewalks, trailways, parking areas, landscaped areas and common utility service areas located on land either owned by the Association or on which the Association has an easement. ESNET wishes to grant the Association such an easement, to provide for the reservation of certain parking rights, and to engage the Association to

perform other repair and maintenance work for Parcel P (but unrelated to the Common Areas), all as set forth below in this Agreement.

F. RAN wishes to grant to ESNET the right to construct improvements on the Transition Property, as set forth below in this Agreement.

G. ESNET wishes to grant to the Association the right to locate and operate certain facilities and equipment on Parcel P in connection with the Association's operation of the Common Areas, as set forth below in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the promises contained below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT:

1. Recitals. The recitals to this Agreement are an integral part of the agreement and understanding of the Parties, and are incorporated by reference in this Agreement.

2. Parking and Construction on Parcel P. ESNET is planning to construct an office building (the "Parcel P-1 Building") and parking lot on Parcel P-1. The Parties acknowledge and agree that the site planning and improvements, and layout of parking associated with Parcel P-1, has been done in the most efficient manner possible so as to maximize the number of parking stalls available for use by the occupants of the Parcel P-1 Building and by occupants and owners of property within the Development. Nothing contained herein shall be construed as an obligation to develop Parcel P-1 at any particular time, or a restriction on ESNET's right to develop Parcel P-1 in a manner other than as contemplated as of the date of this Agreement, subject to the CC&Rs, the Newpark Parcel P Subdivision recorded on Feb. 21, 2012, in Book — at Page —, as Entry No. 939829 in the Official Records of Summit County, Utah (the "Plat"), and applicable governmental requirements and approvals.

3. Grant of Easement to the Association. Subject to the terms of this Agreement, those areas of Parcel P designated in the CCRs and on the Plat as "Common Area" (it being understood that no Common Area is located inside of the exterior walls of the Parcel P-1 Building or inside of the exterior walls of any building(s) constructed on Parcel P-2 in the future), together with the Transition Property designated in the CCRs and on the Plat as "Common Area" (collectively, the "Easement Property"), are to be treated as Common Areas under the CCRs and are to be available for the uses provided in the CCRs (including, but not limited to, those uses set forth in Section 1 of Article IV of the CCRs). Consistent with the above, ESNET and RAN hereby grant to the Association a limited easement to enter onto such Common Areas, but only as reasonably necessary to perform those obligations set forth in the CCRs pertaining to the repair and maintenance (including replacement, as needed) of such Common Areas. The easement granted above is the easement referenced in Note 16 of the Plat. Notwithstanding the designation set forth in the first sentence of this Section 3, and notwithstanding any contrary language in the CCRs, the uses of the

parking areas either existing or to be constructed on Parcel P and on the side of any road or street that is or may in the future be located on or adjacent to Parcel P that are part of the developments or projects dedicated for office use are subject to the following reservations and restrictions:

(a) Parking rights on Parcel P-1 and the rights to the parking stalls either existing or to be constructed which are located on the side of any way that is or may in the future be adjacent to Parcel P-1 may be limited and reserved for the exclusive use of the occupant(s) of the Parcel P-1 Building, between the hours of 7:00 a.m. to 5:30 p.m. on weekdays, exclusive of state and national holidays, and ESNET and/or such occupant(s) (whether owner, successor-in-interest, assignee, tenant, tenants' employees, guests, invitees and patrons) may post notice of and enforce such exclusive use as may be reasonably appropriate.

(b) Seventy-five percent (75%) of the parking stalls located on Parcel P-1 shall be available, on an exclusive basis, for parking for the benefit of the Association from 5:30 p.m. to 7:00 a.m. on weekdays and all day on weekends and state and national holidays; provided, however, tenants, occupant(s), tenants' employees, guests, invitees and patrons of the Parcel P-1 Building shall have the parking rights under the Association during such time.

(c) Notwithstanding Section 3(a) above, twenty-five percent (25%) of the parking stalls to be located on Parcel P-1 (but not the parking stalls located on the side of any road or street that is or in the future may be located on or adjacent to Parcel P) may be limited and reserved for the exclusive use of the occupant(s) of the Parcel P-1 Building (whether owner, successor-in-interest, assignee, tenant, tenants' employees, guests, invitees and patrons) at all times, and ESNET and/or such occupant(s) may post notice of and enforce such exclusive use as may be reasonably appropriate.

(d) In the event that Parcel P-2 is developed as a residential project, all of the parking stalls to be located on Parcel P-2 (but not the parking stalls located on the side of any road or street that is or in the future may be located on or adjacent to Parcel P) may be limited and reserved for the exclusive use of the occupant(s) of the Parcel P-2 building(s) (whether owner, successor-in-interest, assignee, tenant, guests and invitees) at all times, and ESNET and/or such occupant(s) may post notice of and enforce such exclusive use as may be reasonably appropriate.

4. Additional Parking Covenants. The use of all parking areas, either existing or to be constructed on Parcel P and streets which are adjacent thereto, are subject to the following reservations and restrictions:

(a) Twelve (12) parking stalls located along the easterly border of Parcel P and located on Park Lane North shall be available for use by the Association to provide parking 24 hours a day and 365 days a year for the Newpark Townhomes and other NOA members, as determined and regulated from time to time by the Association.

(b) Parcel P-1 Building occupant(s) (whether owner, successor-in-interest, assignee, tenant, tenants' employees, guests, invitees and patrons) and the Association hold the rights to an appurtenant vehicular and pedestrian easement and right of way for access and ingress and egress over and across the circulation lanes on Parcel P and adjacent parcels of land, as identified on the Plat.

(c) In the event of termination of this Agreement due to a default by the Association, the same parking rights that were designed to benefit the Association shall survive for the benefit of all parties benefitting therefrom under the CCRs, subject to payment by the obligated parties of their respective shares of parking maintenance and repair expense in accordance with the CCRs.

5. Maintenance of Common Areas. Consistent with the terms of the CCRs, the Association hereby undertakes responsibility for operation, maintenance and repair of all of the Common Areas located on Parcel P from time to time, including, without limitation, the parking facilities herein described, as well as the Transition Property located immediately adjacent to Parcel P, the costs of which will be levied as an assessment under the terms of the CCRs. The Association also acknowledges and agrees that the Association's use of the Easement Property to fulfill its obligations in this Section 5 shall not unreasonably or unnecessarily interfere with the business, operations, or use of the Parcel P by the occupant(s) thereof. Neither the Association nor any successor shall be allowed to increase the scope of the limited easement granted in Section 3 above or otherwise increase the burden on Parcel P or on the Transition Property.

6. Improvement of Transition Property. The Parties acknowledge that: (i) the Transition Property is Common Area pursuant to the Plat and the CCRs, and is owned by RAN; (ii) ESNET's development and operation of Parcel P-1 will require the improvement of the Transition Property as Common Area integrated with surrounding Common Area located on Parcel P and other surrounding Common Area owned by RAN. In light of the foregoing, RAN hereby grants to ESNET the right to improve the Transition Property as Common Area, generally as approved by Summit County, concurrently with ESNET's development of Parcel P-1, which improvement of the Transition Property shall be at no cost to RAN; provided, the Transition Property Common Area improvements shall be integrated with the Common Area improvements to be constructed on Parcel P and with the existing Common Area improvements located on the immediately adjacent property owned by RAN. In the event any lien is filed against the Transition Property or the property of which the Transition Property is a part in connection with the construction of such Common Area improvements, ESNET shall promptly cause such lien to be released in accordance with applicable Utah law. ESNET hereby indemnifies, holds harmless and agrees to defend RAN from and against all claims, liabilities, judgments, costs and expenses (including attorneys' fees and costs) which arise in connection with the construction of such improvements by ESNET, except to the extent caused by, through or under RAN.

7. Trash Enclosures. Pursuant to Article 13 of that certain Purchase and Sale Agreement pertaining to Parcel P dated March 11, 2011, (the "Purchase Agreement"), ESNET's predecessor-in-interest and Newpark agreed that ESNET will construct, at no cost to Newpark, an enclosure and pad for the existing dumpsters, drums and recycling center currently located on Parcel P, and that they intended to agree upon a specific location therefor prior to the date of the closing under the Purchase Agreement; however, ESNET and Newpark had not yet agreed upon such specific location prior to such closing. In light of the foregoing, ESNET and Newpark hereby agree between them that such specific location shall be on the portion of Parcel P shown on the Site Plan as the "Recycling and Trash Enclosure"; provided, in the event ESNET and Newpark are unable to so locate the Recycling and Trash Enclosure in such area due to any objection by Summit County, ESNET and Newpark hereby agree to work together diligently and in good faith to determine an alternative specific location for the Recycling and Trash Enclosure in accordance with the above-referenced Article 13 (the operative terms and conditions of which are hereby incorporated herein by reference), which specific alternative location shall require the prior written approval of both ESNET and Newpark, which approval shall not be unreasonably withheld or delayed by either ESNET or Newpark. ESNET and Newpark hereby acknowledge and agree that, with respect to granting or withholding any such approval: (i) either ESNET or Newpark shall be deemed reasonable in the event it withholds such approval with respect to any proposed alternative location for the Recycling and Trash Enclosure which would require approval for any reason by either the Snyderville Basin Planning Commission or the Summit County Council; and (ii) ESNET shall be deemed reasonable in the event it withholds such approval with respect to any proposed alternative location for the Recycling and Trash Enclosure which would require a reduction in the number of parking spaces to be located on Parcel P.

In addition, the Parties hereby acknowledge that an additional trash enclosure and pad for dumpsters only are currently located on that portion of Parcel P-2 shown on the Site Plan as the "Trash Only Enclosure", and ESNET hereby agrees that the Trash Only Enclosure may continue to be located and operated in such location. Any relocation of the Trash Only Enclosure shall require the prior, written approval of ESNET, which approval may be granted or withheld for any reason or no reason, in ESNET's sole, subjective discretion.

The Association hereby undertakes responsibility for operation, maintenance and repair as Common Areas the Recycling and Trash Enclosure and the Trash Only Enclosure, together with all related equipment, improvements and facilities, the costs of which will be levied as an assessment under the terms of the CCRs. ESNET hereby grants to the Association a limited easement to enter onto the Common Areas located on Parcel P, but only as reasonably necessary to perform the operation and maintenance obligations set forth in this paragraph.

8. Covenants to Run with Land. The easements, rights and obligations granted or created in this Agreement shall constitute covenants running with Parcel P, with the Transition Property and with the property of which the Transition Property is a part. By coming to have any interest in or occupying Parcel P, the Transition Property or the property of which the Transition Property is a part, the person so coming to have such interest or occupying the same agrees to be

bound by this Agreement. If Parcel P, the Transition Property or the property of which the Transition Property is a part has more than one owner, the liability of each owner under this Agreement shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, the term owner shall not mean a Mortgagee unless until such Mortgagee has acquired title to the realty concern pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure. "Mortgagee" means the mortgagee under a mortgage or the beneficiary under a deed of trust recorded in the official records.

9. Dispute Resolution. The Parties agree that all disputes respecting this Agreement shall be subject to non-binding mediation and, upon the mutual agreement of the Parties, by undertaking arbitration to be conducted in Salt Lake City, Utah, in accordance with § 78-31a-101, *et seq.*, Utah Code Ann. The arbitrator of any such matter, in addition to such other and usual authority, shall also determine the content of any missing, vague or illusory term of this Agreement, including, but not limited to, dimensions and legal descriptions of properties not otherwise fully described herein or the terms of easements and attendant rights or other such matters upon which agreement may be contemplated in the future. The terms of this provision shall be construed broadly so as to grant such arbitrator authority to the fullest extent possible to enforce and define the terms of the agreements between the Parties.

10. Further Documents. The Parties agree to execute and deliver such other and further documents as may be necessary to convey the spirit and intent of this Agreement.

11. Notices. Any notice required or permitted to be given pursuant to this Agreement shall be effective and valid only if in writing, and delivered personally by nationally-recognized express courier or delivery service (next morning business day delivery), or sent by facsimile machine with receipt acknowledged (with a copy by first class mail) or postage prepaid by certified or registered mail, return receipt requested, as follows or to such other address or person as either party or person entitled to notice may specify by notice given as herein provided:

If to Newpark:
Newpark Corporation
c/o Jones Waldo, et. Al.
1441 West Ute Blvd., Suite 330
Park City, Utah 84098
Attention: Greg Cropper, Esq.
Telephone: (435) 649-6920
Fax: (435) 200-0084

With a copy to:
James A. Doilney
1476 Newpark Blvd.
Park City, Utah 84098
c/o Newpark Hotel Front Desk
Telephone: (435) 649-9000
Fax: (435) 649-0218

If to ESNET:	EsNet Properties, L.C. 5255 North Edgewood Drive, Suite 200 Provo, UT 84604 Attention: Kevin Flanagan Telephone: (801) 434-3000 Fax: (801) 434-6000
With a Copy to:	Steven E. Tyler, Esq. HOLLAND & HART, LLP 222 South Main Street, Suite 2200 Salt Lake City, Utah 84101 Telephone: (801) 799-5800 Fax: (866) 711-8035
If to Association:	Newpark Owners Association, Inc. 1476 Newpark Blvd. Park City, Utah 84098 c/o Newpark Hotel Front Desk Attention: Chris Eggleton/Manager Telephone: (435) 649-9000 Fax: (435) 649-0218
If to RAN:	Retail at Newpark, LC 1476 Newpark Blvd. Park City, Utah 84098 c/o Newpark Hotel Front Desk Attention: Marc Wangsgard Telephone: (435) 649-9000 Fax: (435) 649-0218
With a copy to:	James A. Doilney 1476 Newpark Blvd. Park City, Utah 84098 c/o Newpark Hotel Front Desk Telephone: (435) 649-9000 Fax: (435) 649-0218

If to Summit County: Planning Director
Community Development
Summit County
P.O. Box 128
Coalville, Utah 84017
Telephone: (435) 336-3124
Fax: (435) 336-3046

Unless otherwise specified, notices shall be deemed given when received, but if delivery is not accepted, on the earlier of the date delivery is refused or the third (3rd) day after the same is deposited with the United States Postal Service.

12. Miscellaneous.

(a) Except as specifically provided otherwise herein, the Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the Parties.

(b) No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts.

(c) This Agreement shall bind, and inure to the benefit of, the successors and assigns of the Parties.

(d) This Agreement may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterpart. Any Party may deliver this Agreement by facsimile or electronic (PDF) transmission of such signed counterpart to the other Party.

(e) Nothing in this Agreement shall be deemed to be a gift or dedication of all or any portion of Parcel P or the Transition Property for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement be strictly limited to the purposes expressed herein. The easements, rights and obligations created by this Agreement may not be transferred, assigned or encumbered without the prior written consent of ESNET or its successor or assignee with respect to Parcel P, nor without the prior written consent of RAN or its successor or assignee with respect to the Transition Property.

(f) The captions used in connection with the Articles of this Agreement are for convenience of reference only and shall not be deemed to construe or limit the meaning or language of this Agreement.

(g) If any provision of this Agreement is held to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

(h) This Agreement shall be governed and construed in accordance with the laws of the State of Utah.

(i) If any Party initiates or defends an arbitration proceeding or litigation in any way connected with this Agreement, the prevailing Party in such matter, in addition to any other relief which may be granted, shall be entitled to reasonable attorneys' fees, court costs, and other litigation or arbitration expenses. Attorneys' fees shall include attorneys' fees paid on any appeal or confirmation of arbitration award or modification thereto.

(j) A copy of any modification to this Agreement shall be provided to Summit County for recordation within ten (10) business day following the effective date of such modification.

DATED the day and year first written above.

NEWPARK:

NEWPARK CORPORATION,
a Utah corporation

By: _____
Printed Name: JAMES A. DOILNEY
Its: Co-President

ASSOCIATION:

NEWPARK OWNERS ASSOCIATION, INC.,
a Utah non-profit corporation

By: _____
Printed Name: JAMES A. DOILNEY
Its: President

ESNET:

ESNET PROPERTIES, L.C.,
a Utah limited liability company

By: _____
Printed Name: _____
Its: _____

RAN:

RETAIL AT NEWPARK, LC,
a Utah limited liability company

By: _____
Printed Name: JAMES A. DOILNEY
Its: Co-President

(h) This Agreement shall be governed and construed in accordance with the laws of the State of Utah.

(i) If any Party initiates or defends an arbitration proceeding or litigation in any way connected with this Agreement, the prevailing Party in such matter, in addition to any other relief which may be granted, shall be entitled to reasonable attorneys' fees, court costs, and other litigation or arbitration expenses. Attorneys' fees shall include attorneys' fees paid on any appeal or confirmation of arbitration award or modification thereto.

(j) A copy of any modification to this Agreement shall be provided to Summit County for recordation within ten (10) business day following the effective date of such modification.

DATED the day and year first written above.

NEWPARK:

NEWPARK CORPORATION,
a Utah corporation

By:_____
Printed Name:_____
Its:_____

ASSOCIATION:

NEWPARK OWNERS ASSOCIATION, INC.,
a Utah non-profit corporation

By:_____
Printed Name:_____
Its:_____

ESNET:

ESNET PROPERTIES, L.C.,
a Utah limited liability company

By: [signature]
Printed Name: Daniel W. Campbell
Its: Manager

RAN:

RETAIL AT NEWPARK, LC,
a Utah limited liability company

By:_____
Printed Name:_____
Its:_____

STATE OF UTAH)
: ss.
COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 8th day of November 2011, by Daniel W. Campbell the Manager of ESNET PROPERTIES, L.C., a Utah limited liability company.

Cheryl Ivie
NOTARY PUBLIC
Residing at: Provo, Utah

My Commission Expires:
June 1, 2012

CHERYL IVIE
NOTARY PUBLIC • STATE of UTAH
6255 N. EDGEWOOD DR. #200
PROVO, UT 84604
COMM. EXP. 1-1-2012

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, the _____ of NEWPARK CORPORATION, a Utah corporation.

_____
NOTARY PUBLIC
Residing at: _____

My Commission Expires:
_____

STATE OF UTAH)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, the _____ of ESNET PROPERTIES, L.C., a Utah limited liability company.

_____
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

_____

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 4th day of November, 2011, by James A. Dailey, the co-president of NEWPARK CORPORATION, a Utah corporation.

Elizabeth M Thompson
NOTARY PUBLIC
Residing at: 1441 W. Ute Blvd, Ste 330
Park City Ut 84098

My Commission Expires:
7-10-12

Notary Public
ELIZABETH M. THOMPSON
Commission #575280
My Commission Expires
July 10, 2012
State of Utah

1004074.4

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 4th day of November 2011, by James A. Dolney the president of NEWPARK OWNERS ASSOCIATION, INC., a Utah non-profit corporation.

Elizabeth M Thompson
NOTARY PUBLIC
Residing at: 1441 W. Ute Blvd, Ste 330
Park City, Ut 84098

My Commission Expires:
7-10-12

Notary Public
ELIZABETH M. THOMPSON
Commission #570000
My Commission Expires
July 10, 2012
State of Utah

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 4th day of November, 2011, by James A. Dolney, the co-president of RETAIL AT NEWPARK, LC, a Utah limited liability company.

Elizabeth M Thompson
NOTARY PUBLIC
Residing at: 1441 W. Ute Blvd, Ste 330
Park City, Ut 84098

My Commission Expires:
7-10-12

Notary Public
ELIZABETH M. THOMPSON
Commission #570000
My Commission Expires
July 10, 2012
State of Utah

1004074.4

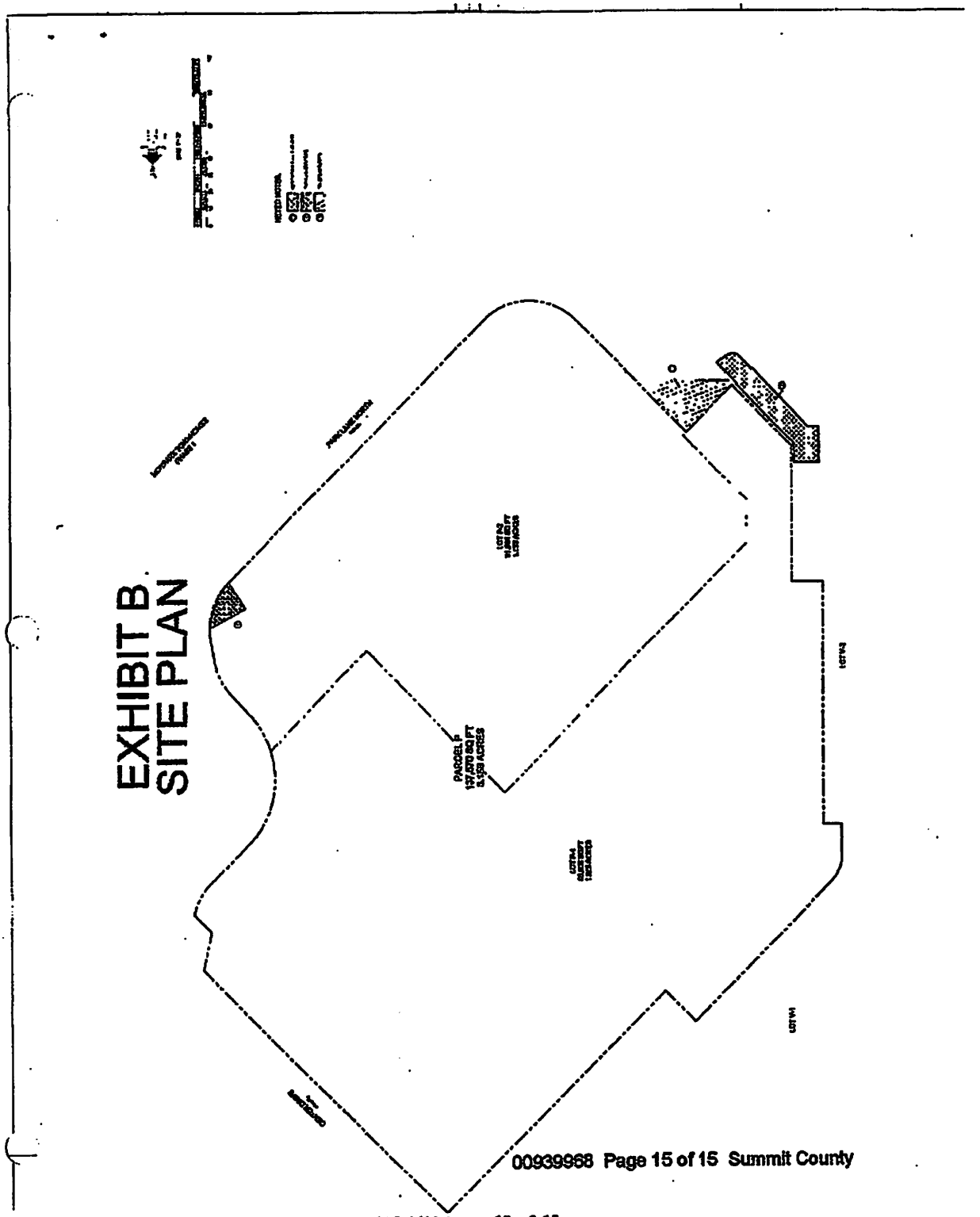
Exhibit "A"
Legal Description of Subject Property

All the certain real property located in the County of Summit, State of Utah, described as follows:

All of Lots P-1 and P-2, Newpark Parcel P Subdivision, according to the official plat thereof, recorded February 21, 2012 as Entry No. 939829 of the official records in the office of the Summit County Recorder.

Summit County Tax Serial No's: NPRK-P-1, and NPRK-P-2

* * *



0485077 NEVISNP-1
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485084 NEVISNP-2
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485091 NEVISNP-3
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485109 NEVISNP-4
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485116 NEVISNP-5
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485123 NEVISNP-6
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485130 NEVISNP-7
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485147 NEVISNP-8
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485154 NEVISNP-9
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485161 NEVISNP-10
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485178 NEVISNP-11
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485185 NEVISNP-12
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485192 NEVISNP-13
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485200 NEVISNP-14
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485217 NEVISNP-15
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485224 NEVISNP-16
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485231 NEVISNP-17
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485248 NEVISNP-18
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485255 NEVISNP-19
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485262 NEVISNP-20
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485279 NEVISNP-21
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485286 NEVISNP-22
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107

0485293 NEVISNP-23
NEVIS AT NEWPARK LLC
308 E 4500 S #200
MURRAY , UT 84107