

11676587  
07/02/2013 01:15 PM \$116.00  
Book - 10155 Pg - 7948-7986  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
4 INDEPENDENCE LLC  
C/O BRYAN J FLAMM  
1099 W SOUTH JORDAN PKWY  
SOUTH JORDAN UT 84095  
BY: SAM, DEPUTY - WI 39 P.

When Recorded, Please Mail to:

4 Independence, LLC  
c/o Bryan J. Flamm  
1099 West South Jordan Parkway  
South Jordan, UT 84095

**NEIGHBORHOOD DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR INDEPENDENCE AT THE  
POINT TOWNHOMES**

THIS NEIGHBORHOOD DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR INDEPENDENCE AT THE POINT TOWNHOMES (this "Declaration") is made and executed this 18th day of February, 2013, by 4 Independence, LLC, a Utah limited liability company, with an address of 1099 West South Jordan Parkway, South Jordan, Utah 84095 ("Declarant").

**RECITALS**

A. Declarant is the owner of all of that certain real property located in Bluffdale City, Salt Lake County, Utah, more particularly described on Exhibit A attached hereto (the "Property"). Declarant is developing the Property as a planned unit development to be known as "Independence at the Point Townhomes" (as such development may be re-named from time to time), a planned residential unit development (the "Project"). Declarant intends that the Project will initially consist of at least thirty (30) townhome units, and that the Project may be expanded to include additional townhome units, as further set forth herein.

B. The Project is located in and is a part of the Independence at the Point development project, and accordingly, the Project is also subject to the covenants, conditions and restrictions set forth in the Declaration of Covenants, Easements Conditions and Restrictions for Independence at the Point (the "Master Declaration") recorded October 17, 2012, as Entry No. 11493945 in Book 10067 at Page(s) 3032 et seq., of the Official Records of the Salt Lake County, Utah Recorder.

C. Pursuant to Section 4.1 of the Master Declaration, this Declaration is intended as a "Neighborhood Declaration" and relates specifically and only to the Project.

D. In order to efficiently manage and to preserve the Common Area located within the Project, it is necessary and desirable to create a nonprofit corporation to own and maintain Common Area in the Project; and to collect assessments and disburse funds as hereinafter set forth for such purpose. Independence at the Point Townhomes Homeowners Association, Inc., a nonprofit corporation, has been or will be incorporated for the purpose of exercising the aforementioned powers and functions.

## **DECLARATION**

NOW, THEREFORE, it is hereby declared that the Project shall be held, sold, conveyed, leased, rented, encumbered, and used subject to the following easements, rights, assessments, liens, charges, covenants, servitudes, restrictions, limitations, conditions, and uses, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Declarant, and each Owner by acceptance of a deed to a Unit, hereby agree, acknowledge and understand that the Project is not, by execution and recording of this Declaration, being submitted to the provisions of the Utah Condominium Ownership Act, §§ 57-8-1, *et seq.*, Utah Code Ann. (the "Condominium Act"). This Declaration does not constitute a declaration as provided for in the Condominium Act and the provisions of the Condominium Act shall not be applicable to Property or any portion thereof. In addition, the Project is not a cooperative under Title 57, Chapter 23, Utah Code Ann.

### **ARTICLE I**

#### **DEFINITIONS**

The following words, phrases, or terms used in this Declaration shall have the following meanings:

(a) "Common Area" shall mean all land within the Project that is now or in the future designated as Common Area by this Declaration, any amendments hereto, areas shown or otherwise designated as Common Area or Open Space on the Plat, and amendments and supplements thereto, or for which the Sub-Association has been granted an easement or which the Sub-Association has been permitted to use. Common Area shall include, but not be limited to, areas shown on the Plat as: (i) all land in the Project which is outside a Unit; (ii) private roads; (iv) landscaped areas; and (v) visitor parking areas, if any.

(b) "Common Elements" shall have the meaning set forth in Section 13.1 below.

(c) "Common Expenses" shall mean all expenses for maintenance, repairs, landscaping, utilities and taxes incurred on or in connection with Common Areas or Common Elements within the Project, all insurance premiums, all expenses incurred in connection with enforcement of this Declaration, all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws of the Sub-Association, and all other expenses which the Sub-Association is entitled to incur pursuant to the provisions of this Declaration or its Bylaws.

(d) "Declarant" shall mean and refer to 4 Independence, LLC, a Utah limited liability company and/or any successor to said company which, either by operation of law

or through a voluntary conveyance, transfer, comes to stand in the same relationship to the Project as did its predecessor. Declarant expressly provides that Declarant may partially assign by express agreement the rights granted to Declarant hereunder to one or more third parties, with such partial assignment to apply to Declarant right associated with any Units acquired by such third parties.

(e) "Development Agreement" shall mean that certain Development Agreement for Independence at the Point (Amended & Restated) dated November 27, 2012, entered into between Declarant and the City of Bluffdale, as may be amended from time to time in accordance with the terms thereof.

(f) "IDRC" shall mean and refer to the Independence Design Review Committee, established pursuant to the Development Agreement.

(g) "Limited Common Areas" shall mean any portion of the Common Areas reserved for the exclusive use of the Owner of a Unit, identified as Limited Common Area on the Plat, including the patio and porches adjacent to each Unit. The use and occupancy of the Limited Common Areas shall be reserved to its associated Unit and each Unit Owner is granted an irrevocable and exclusive license to use an occupy the same so long as such Owner owns the Unit associated with such Limited Common Area.

(h) "Master Association" means the Association established pursuant to the Master Declaration.

(i) "Master Declaration" has the meaning given to that term in Recital B above. In the event of any conflict between the Master Declaration and this Declaration, the terms of the Master Declaration shall control.

(j) "Master Declarant" means 4 Independence, LLC, a Utah limited liability company.

(k) "Master Project" means the Independence at the Point development project, which Master Project is subject to the Master Declaration, as the same may be expanded from time to time by the Master Declarant.

(l) "Member" shall mean any person that is a member of the Sub-Association pursuant to the provisions of Section 4.2.

(m) "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Unit. If there is more than one record holder of legal title to a Unit, each record holder shall be an "Owner."

(n) "Party Wall" means a wall that forms part of a Unit and is located on or adjacent to a boundary line between two or more adjoining Units owned by more than one Owner and is used or is intended to be used by the Owners of the benefited Units, which wall may be separated by a sound board between two or more Units.

(o) "Plat" shall mean the collective reference to the duly approved and recorded plat previously filed in the office of the Salt Lake County Recorder for the Project, and all future plats for future phases of the Project, if any, which may be added to the Project at Declarant's discretion as provided in Section 12.4 below.

(p) "Project" shall mean (i) Independence at the Point Plat B and (ii) all future plats for future phases of Independence at the Point Townhomes, if any, which may be added to the Project at Declarant's discretion as provided in Section 12.4 below.

(q) "Project Plan" means that certain Project Plan attached as an exhibit to the Development Agreement, which consists of, among other things, Design Guidelines relating to the Master Project.

(r) "Property" shall mean and refer to that certain real property located in Bluffdale City, Salt Lake County, State of Utah, and more particularly described on Exhibit A hereof, together with any other real property added to the Project pursuant to Section 12.4.

(s) "Sub-Association" shall mean Independence at the Point Townhome Owners Association, Inc.

(t) "Sub-Association Annual Assessment," or "Annual Assessment," shall mean the charge levied and assessed each year against each Unit pursuant to Section 5.2 hereof.

(u) "Sub-Association Articles" shall mean and refer to the Articles of Incorporation of the Sub-Association.

(v) "Sub-Association Board," or "Board," shall mean the Board of Trustees of the Sub-Association.

(w) "Sub-Association Bylaws" shall mean and refer to the Bylaws of the Sub-Association, as amended from time to time. A copy of the Sub-Association Bylaws is attached hereto and incorporated herein as Exhibit B.

(x) "Sub-Association Maintenance Charges," or "Maintenance Charges," shall mean any and all costs assessed against an Owner's Unit and to be reimbursed to the Sub-Association for work done pursuant to Section 6.2 and fines, penalties and collection costs incurred in connection with delinquent Annual or Special Assessments pursuant to Section 5.7. Amounts collected by the Sub-Association as Maintenance Charges are sometimes referred to herein as "Maintenance Funds."

(y) "Sub-Association Special Assessment," or "Special Assessment," shall mean any assessment levied and assessed pursuant to Section 5.2.

(z) "Townhome" shall mean a building or other structure within which two or more Units is located.

(aa) "Unit" shall mean initially any of the eleven (11) townhome units, separately numbered and individually described on the Plat and intended for independent and private use and ownership, and any such additional townhome units platted in future phases of the Project, if any.

## ARTICLE II

### LAND USE CLASSIFICATION AND DENSITIES

2.1 Land Use Classification. This Project shall be developed as a "Townhome Residential Use" subdivision, as defined in the Master Declaration.

2.2 Density of Project. The Project shall be developed into residential townhome units for Townhome Residential Use, in a total number of Units not to exceed thirty (30) Units, subject to expansion as provided in Section 12.4 below.

## ARTICLE III

### MASTER ASSOCIATION

3.1 Master Association. As further set forth in the Master Declaration, every Owner shall be a member of the Master Association. Membership in the Master Association is mandatory and shall be appurtenant to the Unit in which the Owner has the necessary interest. The rights and obligations of a Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Unit, and any such transfer shall automatically transfer the membership appurtenant to such Parcel to the new Owner thereof. All of the rights, responsibilities, duties, and obligations of the Owners with respect to their membership in the Master Association are set forth in the Master Declaration.

## ARTICLE IV

### SUB-ASSOCIATION

4.1 Formation of Sub-Association. The Sub-Association shall be a nonprofit Utah corporation or limited liability company charged with the duties and invested with the powers prescribed by law and set forth in its Sub-Association Articles and Sub-Association Bylaws and this Declaration. Neither the Sub-Association Articles nor Sub-Association Bylaws of the Sub-Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.2 Membership. In addition to an Owner's membership in the Master Association, every Owner shall also be member of the Sub-Association. No evidence of membership in the Sub-Association shall be necessary other than evidence of ownership of a Unit. Membership in the Sub-Association shall be mandatory and shall be appurtenant to the Unit in which the Owner has the necessary interest. The rights and obligations of a Member shall not be assigned,

transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Unit, and any such transfer shall automatically transfer the membership appurtenant to such Unit to the new Owner thereof. Each Member shall have a non-exclusive right and easement for use and enjoyment of all Common Area within the Project. Such right and easement shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Notwithstanding the foregoing, a Member's right and easement of use and enjoyment is subject to the following:

(a) The right of the City of Bluffdale, Salt Lake County and any other governmental or quasi-governmental body having jurisdiction over the Project to access and have ingress and egress to, from, over and across all Common Area;

(b) The rights of the Sub-Association and the Declarant set forth in this Declaration.

4.3 Voting Rights. The Sub-Association shall have the following-described two (2) classes of voting membership:

(a) Class A. Class A Members shall be all Owners, except Declarant. Class A Members shall be entitled to one (1) vote for each Unit in which the interest required for membership in the Sub-Association is held. Although each of the multiple Owners of a single Unit shall be a Class A Member, in no event shall more than one (1) Class A vote exist or be cast on the basis of a single Unit. Which of the multiple Owners of a single Unit shall cast the vote on the basis of that Unit is determined under Section 4.4 of this Article IV.

(b) Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to thirty one (31) votes for each Unit in which the interest required for membership in the Sub-Association is held; provided that such number of votes for each Unit the Class B Member owns shall increase from time to time, if and when the Project is expanded pursuant to Section 13.4 below, by an amount equal to the number of additional Units included in the applicable additional phase. The Class B membership shall cease and the Declarant shall become a Class A Member upon the first to occur of the following: (i) the sale and conveyance by Declarant to purchasers of all of the Units contained in the Project (as the Project may be expanded pursuant to Section 13.4 below); or (ii) the expiration of fifteen (15) years after the date on which Declarant first conveys to a purchaser fee title to a Unit.

4.4 Multiple Ownership Interests. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Sub-Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

4.5 Lists of Owners. The Sub-Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit which is owned by such person. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Sub-Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Sub-Association may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it, or at its option, the Sub-Association may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Sub-Association is otherwise advised.

4.6 Board of Trustees and Officers. The affairs of the Sub-Association shall be conducted by the Sub-Association Board and such officers as the Sub-Association Board may elect or appoint in accordance with the Sub-Association Articles and Sub-Association Bylaws of the Sub-Association as the same may be amended from time to time. The initial Board shall be composed of three (3) natural persons, designated by Declarant, who need not be Members of the Sub-Association. After the termination of the Class B membership as provided in section 4.3(b) above, the Board may, at the Sub-Association's option, be expanded to a total of five (5) natural persons, and the additional two persons shall be Members. The Board may also appoint various committees and may appoint and hire at Sub-Association expense a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Sub-Association. The Board shall determine the compensation to be paid to the Manager or any other employee of the Sub-Association. At Declarant's option, so long as Declarant owns at least one (1) Unit in the Project, Declarant may appoint one member of the Board.

4.7 Personal Liability. Neither the Declarant, any manager or member of Declarant, nor any member of the Board, officer, manager or other employee or committee member of the Sub-Association shall be personally liable to any Member, or to any other person, including the Sub-Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, negligence, or other matter, of any kind or nature except for acts performed intentionally and with malice.

## ARTICLE V

### ASSESSMENTS

5.1 Master Assessments. The Owners shall be required to pay such assessments as may be required by the Master Association pursuant to the terms of the Master Declaration, including but not limited to a Sub-Association Annual Assessment, Sub-Association Special Assessment, Sub-Association and/or Maintenance Charge imposed by the Master Association, all as set forth in the Master Declaration.

5.2 Purpose of Assessments; Assessment Lien. Without limiting Section 5.1 above, all Members of the Sub-Association hereby covenant and agree, and each Owner, except Declarant, by acceptance of a deed to a Unit is deemed to covenant and agree, to pay to the Sub-Association the following assessments and charges: (a) Sub-Association Annual Assessments,

(b) Sub-Association Special Assessments, and (c) Sub-Association Maintenance Charges, all such assessments and charges to be established and collected as hereinafter provided. The Annual and Special Assessments shall include provision for a reasonable reserve fund, as determined by the Board. The Annual Assessments, Special Assessments, and Maintenance Charges, together with interest, costs and reasonable attorneys' fees, shall be secured by a lien (the "Assessment Lien") on the Unit to which they relate, in favor of the Sub-Association, which shall be a continuing servitude and lien upon the Unit against which each such assessment or charge is made. The Assessment Lien shall be a charge on the Unit, shall attach from the date when the unpaid assessment or charge shall become due, and shall be a continuing lien upon the Unit against which each assessment is made. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The Assessment Lien may be foreclosed by the Sub-Association in substantially the same manner as provided for non-judicial foreclosure of deeds of trust on real property upon the recording of a Notice of Delinquent Assessment or charge as set forth in Section 5.7 hereof and/or the foreclosure rights and methods described in the Community Association Act, Utah Code Ann. ("U.C.A.") 57-8a. In order to facilitate the foreclosure of any such Assessment Lien in the manner provided at law for the foreclosure of deeds of trust, the Board may designate a trustee with full power of sale, to foreclose any such Assessment Liens as directed by the Board. Such trustee, and any successors, shall not have any other right, title or interest in the Project beyond those rights and interests necessary and appropriate to foreclose any Assessment Liens against Units arising pursuant hereto. In any such foreclosure, the Owner of the Unit being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the Assessment Lien being foreclosed. The Sub-Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale. Pursuant to U.C.A. 57-8a-212 (2011), the Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Advanced Title Company, with power of sale, the Units and all improvements to the Units for the purpose of securing payment of all Assessments, together with interest, cost and reasonable attorneys' fees, under the terms of this Declaration. If an Owner fails or refuses to pay any Assessment when due, the Board shall have the right, after giving notice and an opportunity to be heard in accordance with the Community Association Act, U.C.A. 57-8a, to terminate an Owner's right (a) to receive utility services paid as a Common Expense and (b) of access and use of any recreational facilities constituting a portion of the Common Areas. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be charged, and is exempt from paying, any assessments, whether Annual, Special, Maintenance or otherwise, with respect to Units owned by Declarant.

5.3 Sub-Association Annual Assessments. Commencing on the date on which Declarant first conveys to a purchaser fee title to a Unit, a Sub-Association Annual Assessment shall be made against each Unit, except any Unit owned by Declarant, for the purpose of paying (or creating a reserve for) Common Expenses.

5.4 Sub-Association Special Assessments. In addition to the Sub-Association Annual Assessment authorized above, the Sub-Association may levy, except with respect to Units owned by Declarant, in any assessment period, a Sub-Association Special Assessment applicable to that

period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Common Area, or for the purpose of defraying other extraordinary expenses; provided that any such assessment shall have the assent of a majority of the total number of votes held by the Members who are voting in person or by proxy at a meeting duly called for such purpose.

5.5 Uniform Rate of Assessment. Annual Assessments shall be fixed at a uniform rate for all Units, except Units owned by Declarant, and may be collected on a yearly basis or more frequently if the Board shall so determine.

5.6 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the twelve month period beginning January 1 of each year. The Board, in its sole discretion from time to time, may change the Assessment Period by recording with the County an instrument specifying the new Assessment Period. The Board shall fix the amount of the Annual Assessment against each Unit at least thirty (30) days in advance of the end of each Assessment Period. Written notice of the Annual Assessment shall be sent to each Member. Failure of the Sub-Association to send a bill to any Member shall not relieve the Member of liability for payment of any assessment or charge. The due dates shall be established by the Board. The Sub-Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Sub-Association setting forth whether the assessments on a specific Unit have been paid.

5.7 Effect of Nonpayment. Any assessment or charge or installment thereof not paid when due shall be deemed delinquent and in the discretion of the Board may bear interest from thirty (30) days after the due date until paid at the rate of interest of 12% per annum, and the Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Sub-Association in collecting the same. The Board may also record a Notice of Delinquent Assessment or Charge against any Unit as to which an assessment or charge is delinquent. The Notice shall be executed by an officer of the Sub-Association or a member of the Board, set forth the amount of the unpaid assessment, the name of the delinquent Owner, and a description of the Unit. The Board may establish a fixed fee to reimburse the Sub-Association for the Sub-Association's cost in recording such Notice, processing the delinquency, and recording a release of such lien, which fixed fee shall be treated as part of the Maintenance Charge of the Sub-Association secured by the Assessment Lien. The Sub-Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment and/or foreclose the lien against such Owner's Unit. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the benefits derived from assessments or abandonment of his or her Unit. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be charged and is exempt from paying any assessments, whether Annual, Special, Maintenance, or otherwise, with respect to Units owned by Declarant.

5.8 Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has loaned funds with a Unit as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges. Except as provided above, the Assessment Lien shall be superior to any and all charges, liens or encumbrances

which hereafter in any manner may arise or be imposed upon each Unit. Sale or transfer of any Unit shall not affect the Assessment Lien.

## ARTICLE VI

### MAINTENANCE

6.1 Common Areas; Common Elements. The Sub-Association shall have the duty of maintaining and repairing all of the Common Areas and Common Elements on Townhomes within the Project and the cost of said maintenance and repair shall be a Common Expense of all of the Owners. The Sub-Association shall not need the prior approval of its Members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof. In addition, the Sub-Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas in the Project. The Sub-Association shall have the power to grant easements for utilities or other purposes on or under the Common Areas to the extent that the Board deems it necessary or advisable. This maintenance will include the installation of landscaping, mowing, watering and appropriate upkeep and repair of any designated Common Areas, and the sweeping, snow removal, repair, and maintenance. The Board shall be the sole judge as to the appropriate maintenance of all Common Areas, Common Elements and other properties and elements maintained by the Sub-Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of such properties shall be taken by the Board or by its duly delegated representative.

6.2 Assessment of Certain Costs. In the event that the need for maintenance or repair of Common Areas or Common Elements and other areas maintained by the Sub-Association is caused through the willful or negligent act of any Owner (except Declarant), his or her family, guests or invitees, the cost of such maintenance or repairs shall be added to and become part of the Maintenance Charge to which such Owner's Unit is subject and shall be secured by the Assessment Lien.

6.3 Improper Maintenance. In the event any portion of any Unit, except Units owned by Declarant, is so maintained or used by an Owner as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Units or other areas of the Project which are substantially affected thereby or related thereto; or in the event any portion of a Unit, except Units owned by Declarant, is being used in a manner which violates this Declaration; or in the event any Member, except Declarant, is failing to perform any of its obligation under this Declaration or standards of the Board, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Member that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at such Owner's cost. If at the expiration of such fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become part of the Maintenance Charge and shall be secured by the Assessment Lien.

## ARTICLE VII

### RIGHTS AND POWERS OF SUB-ASSOCIATION

7.1 Sub-Association's Rights. In addition to the rights and powers of the Sub-Association set forth in this Declaration, the Sub-Association shall have such rights and powers as are set forth in its Sub-Association Articles and Sub-Association Bylaws. In the event of any conflict between the Sub-Association Articles and Sub-Association Bylaws and this Declaration, the terms of this Declaration shall control. In the event of any conflict between the Sub-Association Articles and Sub-Association Bylaws, the terms of the Sub-Association Articles shall control.

7.2 Rights of Enforcement. The Sub-Association, as the agent and representative of the Members, shall have the right to enforce the covenants set forth in this Declaration. The Sub-Association or Declarant shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. If the Sub-Association prevails in any proceeding at law or in equity to enforce the provisions of this Declaration, the Sub-Association is entitled to an award of its costs and reasonable attorneys' fees associated with the action. Failure by the Sub-Association or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE VIII

### INSURANCE

8.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Unit to a purchaser, other than Declarant, the Sub-Association shall maintain, to the extent reasonably available, the following insurance coverage:

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

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

(c) Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

(d) Fidelity bonding of the Board and employees of the Sub-Association having control of, or access to, the funds of the Sub-Association with loss coverage ordinarily not less than the maximum amount of funds of the Sub-Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time;

(e) Errors and omissions insurance coverage for the Board; and

(f) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Sub-Association or the Owners.

(g) Each insurance policy purchased by the Sub-Association shall, to the extent reasonably available, contain the following provisions:

(h) The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Sub-Association or its agents, servants or employees, or with respect to claims against Owners or occupants;

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

(j) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, occupants or mortgagees;

(k) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or occupant because of the negligent acts of the Sub-Association or other Owners or occupants;

(l) Statement naming the Sub-Association as the insured; and

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

8.2 Hazard Insurance. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-international edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBQ" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not

meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

8.3 Payment of Premiums. The premiums for any insurance obtained by the Sub-Association pursuant to this Declaration shall be included in the budget of the Sub-Association and shall be paid by the Sub-Association as a Common Expense.

8.4 Payment of Insurance Proceeds. With respect to any loss to the Common Area or Units covered by property insurance obtained by the Sub-Association, the loss shall be adjusted with the Sub-Association, and the insurance proceeds shall be payable to the Sub-Association and not to any mortgagee. Subject to the provisions of Section 8.5, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area or Units.

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

## ARTICLE IX

### MORTGAGEE REQUIREMENTS

9.1 Notice of Action. The Board shall maintain a roster containing the name and address of each Eligible Mortgagee as such term is defined herein. To be considered an Eligible Mortgagee, a First Mortgagee shall provide the Board with a certified copy of its Recorded First Mortgage and the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage together with a written request that it receive notice of the matters and actions described below. The Board shall strike an Eligible Mortgagee from the roster upon request by such Eligible Mortgagee or upon the Board's receipt of a certified copy of a Recorded full release or satisfaction of the Eligible Mortgage. The Board shall give notice of such removal to the Eligible Mortgagee unless the removal is requested by the Eligible Mortgagee. Upon the Board's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor;

(b) Any delinquency in the payment of Assessments or charges owed by an Owner whose Unit is subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; and

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Sub-Association.

9.2 Availability of Project Documents and Financial Statements. The Sub-Association shall maintain and have current copies of the Project documents, membership register, books, records, and financial statements available for inspection by Members or by Eligible Mortgagees. Generally, these documents shall be available during the Sub-Association's normal business hours, and may be maintained and kept at the office of the manager for the Sub-Association. The Sub-Association may, as a condition to permitting a Member to inspect the membership register or to its furnishing information from the register, require that the Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the regular business of the Sub-Association and the Member's interest in the Sub-Association.

9.3 Subordination of Lien. The Assessment or claim against a Unit for unpaid Assessments or charges levied by the Sub-Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit, and the First Mortgagee thereunder which comes into possession of or which obtains title to such Unit shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, charge, Assessment Lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or which obtains title to a Unit, shall be collected or enforced by the Sub-Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

9.4 Notice to Eligible Mortgagee. The Sub-Association shall give timely written notice of the events listed in Section 9.1 above to any Eligible Mortgagee who requests such notice in writing.

9.5 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Area are not timely paid, or in the event the required hazard insurance described in Section 8.2 lapses, is not maintained, or the premiums therefore are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Prior to paying any taxes or premiums, such First Mortgagee or First Mortgagees shall provide thirty (30) days advance written notice to the Board, which notice shall specify the nature of the taxes or premiums and suggest a reasonable cure period for such payments.

9.6 Priority. No provision of this Declaration or the Sub-Association Articles gives or may give a Member or any other party priority over any rights of mortgagees pursuant to their

respective mortgages in the case of a distribution to Members of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Area. All proceeds or awards shall be paid directly to any Mortgagees of Record, as their interests may appear.

## **ARTICLE X**

### **DESIGN REVIEW**

10.1 Purpose. As further set forth in the Master Declaration, in order to create, maintain and improve the Master Project as a pleasant and desirable environment, to establish and preserve a consistent and harmonious design for the Master Project community and to protect and promote the value of the Master Project, all exterior design, landscaping and changes or alterations to existing use, landscaping and exterior design and development within the Project shall be subject to design review and approval by the IDRC.

10.2 Design Guidelines. As further set forth in the Master Declaration, the Project and all residences constructed thereon shall be subject to the Design Guidelines set forth in the Project Plan of the Development Agreement, including without limitation, the design review and approval process as set forth therein.

## **ARTICLE XI**

### **COVENANTS, CONDITIONS AND RESTRICTIONS**

11.1 Land Use and Building Type. No Unit shall be used for other than residential purposes. No Unit shall exceed the height limitation for the applicable zone of Bluffdale City as specified at the time of recordation of the Plat. Unless otherwise approved by the IDRC, each dwelling must have at least a one-car and no more than a three-car garage. Carports may not be built unless otherwise authorized by the IDRC. All such dwellings shall meet the minimum size requirements of Bluffdale City (if any) as specified at the time of the recordation of the Plat. Height shall be measured as per Bluffdale City Ordinance. The side yard for each building shall meet the minimum requirements of the Independence at the Point Project Plan.

11.2 Architectural Control. To maintain a degree of protection to the investment which homeowners in this area may make, homes of superior design are requisite, and designs shall be limited to those approved by the IDRC. In the event of any reconstruction of an improvement or a townhome unit due to a casualty, the design, quality, and appearance of the reconstructed home shall be substantially the same as the structure initially built, unless otherwise approved by the IDRC. No landscaping, grading, excavation, building, fence, wall, residence, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications, have been approved in writing by the IDRC. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme, and all changes in the grade on the Property, shall be subject to the prior written approval of the IDRC. Once approved by the

IDRC, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the IDRC. Subsequent to receiving approval of the IDRC and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit from Bluffdale City.

No construction, reconstruction or modification of a home or landscaping may commence without approval by the IDRC of the working drawings including, but not limited to, the following:

- (a) Plot plans to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property line and street fronts and elevations of floors from a designated point on the street.
- (b) Detailed floor plans showing dimensions and measurements.
- (c) Detailed elevations, indicating all materials and colors and showing existing and finished grades.
- (d) Detailed sections, cross and longitudinal.
- (e) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

Specifications shall give complete descriptions and color samples of materials to be used on the exterior of the residence.

11.3 Construction Quality, Size and Cost. The IDRC will base its approval of construction plans, specifications, landscaping plans, and other alterations upon compliance with the Design Guidelines and other provisions found within the Project Plan.

11.4 Construction Time. The IDRC shall have final control for approval of all color and material plans. There is no time limit for beginning construction; however, upon commencement, the construction time for the exterior portion of any structure shall not exceed twelve (12) months from start to finish. "Start" shall be the instant any foliage is cut or removed in anticipation of the landscaping or construction to be built. All building debris, excavation, dirt, etc. associated with the building process shall be removed within the twelve (12) month period. Such debris and excavation dirt shall not be permitted on any of the streets or sidewalks within the Project.

11.5 Building Location. No building shall be located on the Property nearer than the minimum building set-back, side street and side lot lines required by the Project Plan.

11.6 Landscaping. Any trees, lawns, shrubs, or other planting provided by Declarant, including without limitation, those provided in the Common Area, shall be properly nurtured and maintained by the Sub-Association. Each Unit Owner, except the Declarant, shall be assessed the Annual Assessment set forth in Section 5.2 to maintain these areas. No Owner may plant any shrub, tree or other vegetation within, or otherwise modify, alter or add to the landscaping

without the Board's prior written consent. The planting of trees that will have a high profile and obstruct the view from neighboring Units is prohibited. Such trees may be pruned or removed at the discretion of the Board. Landscaping shall be installed and maintained by the Sub-Association and may include a combination of lawns, shrubs, or ground cover.

11.7 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage, or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

11.8 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants. The Board, in its sole discretion, shall have the right to determine the existence of any nuisance.

11.9 Signs. Except as provided in this Section 11.9, no signs of any kind shall be displayed to public view on any Unit except one sign per Unit of not more than five square feet advertising the property for sale or rent and signs placed by Declarant in connection with its development of the Project. The placement of signs, graphics, or advertisements which are permanent in nature or represent advertisement for small business conducted in the Unit is prohibited.

11.10 Animals. No animal, bird, fowl, poultry, or livestock of any kind shall be raised, bred, or kept on or within any Unit except pursuant to applicable Bluffdale City ordinance and rules and regulations adopted from time to time by the Board; provided, however, that under no circumstances shall any animal kept by an Owner create a nuisance, safety or health threat to other Owners or to area wildlife. All such household pets shall be kept within the Unit and controlled so as to not leave the Owner's property. Dogs and cats belonging to Owners, occupants or their licensees or invitees within the Project must be kept within an enclosure (or on a leash being held by a person capable of controlling the animal). Upon written request of any Owner, the Board shall conclusively determine (in its sole discretion) whether a particular animal, bird, or fowl, is a nuisance. Any decision rendered by the Board shall be enforceable in the same manner as any other restriction contained herein.

11.11 Restriction on Further Subdivision, Property Restrictions, and Rezoning. No Unit shall be further subdivided or separated into smaller Units by any Owner, and no portion less than all of any such Unit, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the Plat or other instrument creating the subdivisions, easement, or other interest. No further covenants, conditions, restrictions, or easements shall be recorded by any Owner or other person against any Unit without the provisions thereof having been first approved in writing by the Board, and any covenants, conditions, restrictions, or easements

recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Unit and no applications for variances or use permits shall be filed with any governmental authority unless the proposed uses of the Unit has been approved by the Board and the proposed use otherwise complies with this Declaration.

11.12 Non-Residential Use. No gainful occupation, profession, or other non-residential use shall be conducted within any Unit, and no persons shall enter within any Unit for engaging in such uses or for the purpose of receiving products or services arising out of such usage; provided, however, gainful occupations or professions may be operated or maintained in a Unit provided that: (i) any such business, profession or trade may not require heavy equipment or create a nuisance within the Project, (ii) may not noticeably increase the traffic flow to the Project, (iii) may not be observable from outside the Unit, and (iv) may only be carried on following approval from the city with jurisdiction over the matter, pursuant to all applicable state and city laws, rules and ordinances in effect at the time any such use is requested. Specifically, it is contemplated that certain “home office” businesses, professions or trade which rely heavily on the Internet and other similar type of technological advances may be operated or maintained within a Unit, subject to the foregoing limitations and all other limitations of this Declaration.

11.13 Easements. Easements for installation of and maintenance of utilities, drainage facilities, water tank access and lines are reserved as shown on the recorded Plat. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or water tank lines or which may change the direction of flow or drainage channels in the areas or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each of the Units and all improvements in it shall be maintained continuously by the Sub-Association, except for those improvements for which a public authority or utility company is responsible. The Sub-Association has the authority to grant additional easements as it deems necessary or convenient within the Common Areas. Each Owner, for each Unit that he, she or it owns, hereby acknowledges and agrees that a Party Wall may presently encroach upon or overlap the Owner’s Unit. To the extent the Party Wall does encroach upon or overlap a Unit, the Owner of said Unit hereby grants to the adjoining Owner of the other Unit that shares a Party Wall an easement over and upon its Unit for the purpose of maintaining the Party Wall and carrying out the other obligations set forth in this Declaration. By accepting a deed to a Unit, each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay or limit the maintenance of the Party Wall and the performance of the Sub-Association’s obligations and each Owner’s respective obligations under this Declaration.

11.14 Fences and Walls. Fencing and walls are prohibited within the Project, except for (i) the entry to the Project, and in other Common Areas, all as installed by Declarant; and (ii) privacy fences approved by the Board and the IDRC. Any such privacy fence shall be constructed of materials approved by the Board and the IDRC, and shall be color coordinated with the approved Unit colors.

11.15 Parking and Storage. No major mechanical work or repairs are to be conducted in streets or front yards. No inoperative automobile or vehicle shall be placed or remain on any Unit for more than forty-eight (48) hours. No commercial-type vehicles and no trucks shall be parked or stored on the front yard setback of any Unit or within the side yard buildings setback

(if any) on the street side of a corner Townhome, or on the residential street except while engaged in transportation. Trailers, mobile homes, trucks over three quarter ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors, and maintenance or commercial equipment of any kind shall be parked or stored in an enclosed area screened from street view as approved by the Board and the IDRC. The storage or accumulation of junk, trash, manure, or other offensive or commercial materials is prohibited.

#### 11.16 Additional Easements.

(a) Easements for Encroachments. If any structure constructed by Declarant on the Property now or hereafter encroaches upon any other portion of the Property, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any portion of the Property shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other portion of the Property due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

(b) Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of residences on the Property, and (b) construction, installation and maintenance on lands within, adjacent to, or serving the Property other facilities, planned for dedication to appropriate governmental authorities. The reservations contained in this paragraph shall expire twenty-five (25) years after the date on which this Declaration was first filed for record in the Office of the County Recorder of Salt Lake County, Utah.

11.17 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Units, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant and/or other persons engaged in the construction of residences within the Project so long as the location of such model homes and the opening and closing hours are approved by the IDRC, and the construction, operation and maintenance of such model homes otherwise complies with all of the provisions of this Declaration. The IDRC may also permit portions of the Property and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of Bluffdale City and any rules of the IDRC. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of residences within the Project, and no home shall be used as a model home for the sale of homes not located within the Master Project.

## ARTICLE XII

### AMENDMENTS

12.1 Term: Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of thirty (30) years from the date of recordation. From and after such date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten-year extension. The Declaration may be terminated at any time if at least ninety-percent (90%) of the votes cast by all Owners shall be cast in favor of termination at an election held for such purpose. If the necessary votes are obtained, the Board shall cause to be recorded in the office of the Salt Lake County Recorder a "Certificate of Termination," duly signed by the President and Vice President and attested by the Secretary or Assistant Secretary of the Sub-Association, with their signatures acknowledged. Thereupon, the covenants herein contained shall have no further force and effect, and the Sub-Association shall be dissolved pursuant to the terms set forth in its Sub-Association Articles.

12.2 Amendments. This Declaration may be amended by recording in the office of the Salt Lake County Recorder a "Certificate of Amendment," duly signed and acknowledged by Owners representing sixty-seven percent (67%) of Owners subject to this Declaration. Anything in this Article IX or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration (a) to such extent and with such language as may be requested by Federal National Mortgage Association, HUD, or similar agencies or entities and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Units or any portions thereof, and (b) for any other purpose, for so long as (i) Declarant owns at least one (1) Unit within the Project, and (ii) such amendment does not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

12.3 Unilateral Amendment. Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Unit. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant: (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing; or (c) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without

Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA), or any similar agency). Further, so long as Declarant is the Owner of any Unit in the Project, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect title to any Unit without the consent of the affected Owner. Such amendments may include, but are not limited to, changing the nature or extent of the uses to which such property may be devoted or readjustment of Unit line boundaries in connection with the location and development of the Project.

12.4 Expansion of Project. Declarant shall have the right in its sole discretion upon recording a Certificate of Amendment signed by Declarant to expand the Project to include additional phases and Units, and/or to add to the development known as Independence at the Point Townhomes (as such development may be re-named, from time to time), all of which additional property shall, upon recording such Certificate of Amendment, be subject to this Declaration.

### **ARTICLE XIII**

#### **PROVISIONS RELATING TO TOWNHOMES**

13.1 Common Elements of Townhomes. The following components of the Units are considered "Common Elements" with respect to the Townhome: (i) all structural parts of the Townhome, including, without limitation, foundations, columns, girders, joists, beams, supports, main walls, supporting walls, floors, ceilings and roofs; (ii) any utility pipe or line or system servicing more than a single Unit in a Townhome, and all ducts, wires, conduits, and other accessories used therewith; (iii) all tanks, pumps, motors, fans, compressors, ducts, mechanical areas, garbage area, and in general all apparatus and equipment existing for common use. The Common Elements shall be owned by the Owners in a Townhome as tenants in common. The Common Elements shall remain undivided. No Owner or combination thereof or any other person shall bring any action for partition or division of any part thereof.

13.2 Townhome Unit. A Unit is comprised of each separate physical part of the Townhome, as shown on the Plat, which is intended for independent use. Each Unit shall include the enclosed rooms occupying such Unit's share of the building in which it is located and bounded by the interior surfaces of the walls, floors, ceilings, windows, doors and built-in fireplaces, if any, along the perimeter boundaries of the air space as said boundaries are shown on the Plat, together with all fixtures and improvements therein contained. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit in so far as they are necessary for the support or full use and enjoyment of another Unit: bearing walls, floors, ceilings and roofs (except the interior surfaces thereof), foundations, space heating equipment and central water heating equipment, if any, tanks, pumps, pipes, vents, ducts, shafts, flues, shoots, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door means the points at which such surfaces are located when such windows or doors are closed.

13.3 Division Between Units. Each Unit, as described on the Plat, shall include that part of the Townhome containing the Unit which lies within the boundaries of the Unit. Such boundary shall be determined in the following manner: the upper boundary shall be the plane of the lower surface of the ceiling; the lower boundary shall be the plane of the upper surface of the floor; and the vertical boundaries of the Unit shall be: (i) the interior surface of the outside walls of the building bounding a Unit; (ii) the center line of any non-bearing interior walls bounding a Unit; and (iii) the interior surface of any interior bearing walls bounding a Unit. Each Unit includes the portions of the building so described and those things which are defined as Common Elements. Each Unit's undivided interest in the Common Elements, including "Limited Common Elements" (e.g., Common Elements used exclusively by or benefiting a particular Unit), shall be separated from the Unit to which they appertain and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

13.4 Restrictions on Use of Units.

(i) No awning, canopy, deck antenna, shutter, storm door, screen door or other item or object shall be hung, be displayed, be visible or otherwise be placed on the exterior walls or roof of any Townhome in the Project or any part thereof, or on the outside of windows, or doors, without the prior written consent of the Sub-Association.

(ii) Nothing shall be done in any Unit of a Townhome or in, on or to the Common Elements which will impair the structural integrity or structurally change the same or any part thereof except as is otherwise provided herein.

(iii) The Common Elements shall be kept free and clear of all rubbish, debris and other unsightly materials.

(iv) Each Owner of a Unit shall be liable to the Sub-Association for all damages to the Common Elements caused by such Unit Owner or any occupant of his Unit or invitee, except for that portion of said damage, if any, that is covered by insurance maintained in effect by the Sub-Association. The failure of the Sub-Association to continue any insurance in effect shall not be a defense to any such liability.

(v) There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written consent of the Sub-Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the Common Elements except upon the prior written consent of the Sub-Association.

13.5 Maintenance Responsibility Of Unit Owner. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint, wall and floor tile and flooring) making up the finished surfaces of the perimeter walls, ceilings,

and floors within the Unit, including any non-exterior Unit doors and nonexterior windows. The Owner shall not be deemed to own lines, pipes, wires, conduits, or systems (which for brevity are herein an hereafter referred to as utilities) which serve one or more other Units except as tenant in common with the other Owners. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board. Such right to repair, alter, and remodel is coupled with the obligation to replace any finished or other materials removed with similar or other types or kinds of materials. An Owner shall maintain and keep in repair the interior of his Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair the structural soundness or integrity of the Building, impair any easement or hereditament, nor violate any laws, ordinances, regulations and codes of the United States of America, the State of Utah, the County of Salt Lake, Bluffdale City, or any other agency or entity which may then have jurisdiction over said Unit; without the written consent of the Board after first proving to the satisfaction of the Board that compliance with this section's requirements will be maintained during and after any such act or work shall be done or performed. Any expense to the Board for investigation under this Article shall be borne by the relevant Owner. However, nothing herein contained shall be construed to permit structural modification and any decision relating thereto shall be in the absolute discretion of the Board, including, but not limited to the engaging of a structural engineer at the Owner's expense for the purpose of obtaining an opinion. An Owner shall also keep the Limited Common Elements appurtenant to his Unit in a well-repaired, maintained, clean and sanitary condition, at his or her own expense. An Owner shall be obligated to reimburse the Sub-Association promptly upon receipt of its statement of any expenditures incurred by it in repairing or replacing any Unit elements or Limited Common Element in a Townhome for which the Owner is responsible, or for the repairs of another's Unit or any Common Element of a Unit damaged by any act or failure to act of the Unit Owner, his tenants, guests, invitees or agents.

13.6 Failure to Maintain Party Wall. If any Owner shall fail to comply with the provisions of this Declaration as to maintenance, repair, or use of any common or interior bearing walls, or the obtaining of insurance as set forth in Section 13.7 below, or other obligations contained herein ("Defaulting Owner"), then in any such event the adjoining Owner shall have the right, upon thirty (30) days written notice to the Defaulting Owner (unless within such 30-day period the Defaulting Owner shall cure such default, or in the case of a nonmonetary default which by its nature cannot be cured within such 30-day period, the Defaulting Owner shall take such action as is reasonably calculated to commence the curing thereof, and thereafter shall diligently prosecute the curing thereof to completion) to proceed to take such action as shall be necessary to cure such default, all in the name of and for the account of the Defaulting Owner. The Defaulting Owner shall on demand reimburse the other adjoining Owner taking such action for the monies actually expended by such adjoining Owner and the adjoining Owner's reasonable out-of-pocket expenses in so doing, together with interest thereon as set forth below from the date of demand to the date of payment. Notwithstanding the foregoing, if the nondefaulting adjoining Owner shall in good faith deem that an emergency is occurring or has occurred, so that the default requires immediate curing, then no notice shall be required and the nondefaulting adjoining Owner may act promptly without giving notice and take such action as is necessary to cure the alleged failure. Any adjoining Owner performing any action pursuant to the preceding sentence shall interfere to the minimum extent possible with the Defaulting

Owner's use and occupancy of such Defaulting Owner's Unit, and, with reasonable promptness, shall give verbal or written notice to the Defaulting Owner of such action and the claimed failure.

(a) Any unresolved dispute, disagreement or controversy between a Defaulting Owner and an adjoining Owner shall at the request of either party be submitted to an arbitration board of at least three (3) members with one chosen by the adjoining Owner, the other by the Defaulting Owner and a third by the other two arbitrators so chosen. The arbitrators shall act in accordance with the commercial Arbitration Rules then in effect of the American Arbitration Board. At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions or restrictions applicable to the maintenance of Party Walls or rules or regulations adopted by the Sub-Association, the arbitrators may issue an order prohibiting the action upon which the claim is based. An award must be made within thirty (30) days after the conclusion of arbitration, unless a shorter period is agreed upon by the adjoining Owner and the Defaulting Owner. The decision of the majority of such arbitrators shall be binding on the adjoining Owner and the Defaulting Owner. Such decisions shall include the awarding of costs, including reasonable attorneys fees, as the arbitrators shall determine. The decision of the arbitrators shall be judicially enforceable as a judgment.

(b) All sums required to be reimbursed or otherwise paid hereunder by one Defaulting Owner to the other adjoining Owner shall bear interest per annum at the floating rate of 1% over the then current "prime rate" of interest announced in the Wall Street Journal. Such interest rate shall be determined monthly on the first day of each calendar month. In addition, any Defaulting Owner who fails to pay its obligations under this Declaration agrees to pay the other adjoining Owner's reasonable collection costs, including reasonable attorneys' fees.

(c) All remedies hereby specifically set forth in this Section 13.6 are cumulative and shall be deemed to be in addition to any remedies available at law or in equity which shall include the right to restrain by injunction any violation or threat of violation by any Owner of any of the terms, covenants, or conditions of this Declaration governing Party Walls and by decree to compel specific performance of any such terms, covenants, or conditions governing Party Walls, it being agreed that the remedy at law for any breach of any such term, covenant, or condition governing Party Walls is not adequate. Notwithstanding the foregoing, no default by any Owner under this Agreement shall entitle any other adjoining Owner to terminate, cancel, or otherwise rescind this Declaration or any terms, covenants or conditions governing Party Walls.

(d) The Board, without obligation and in its sole and exclusive discretion, may also notify the Defaulting Owner of the work required to the Party Wall and demand that it be done within a reasonable and specified period and individually charge the enforcement costs thereof to such Defaulting Owner, which enforcement costs shall be secured by the Assessment Lien. Moreover, in the event a medical emergency, a property damage emergency or similar type of emergency which requires immediate

curing shall arise in connection with an Owner's Unit, the Board shall have the right, but not the obligation, to immediately enter into the Unit to abate the emergency upon reasonable advance notice to such Owner considering the nature, scope and extent of the emergency (e.g. advance telephone calls or doorbell ringing or knocking). The Board shall have the right to individually charge the cost to cure the emergency condition to such Owner if such emergency was the personal responsibility of the Owner or if it was caused by the Owner's negligent or willful acts.

13.7 Insurance of Party Walls; Waiver. By acceptance of a deed to a Unit, each Owner hereby acknowledges his, her or its independent insurance obligations for the respective Party Wall which constitutes a portion of the Owner's Unit, and agrees to maintain in full force and effect "all-risk" property insurance with respect to the Unit owned by such Owner. Such insurance shall be in an amount equal to at least 100% of the replacement cost of such Owner's Unit, exclusive of the cost of excavation, foundations and footings, and shall protect against loss or damage by fire, water, utility service line ruptures and all other hazards that are normally covered by the standard extended coverage endorsement. Each policy shall be carried with a company rated X or better in "Best's Insurance Guide", and each Owner shall provide a copy of the policy obtained by such Owner to the Board and the other adjoining Owner and such policy shall require thirty (30) days notice to the Board and the other adjoining Owner before the policy can be cancelled. All policy proceeds payable with respect to damage or destruction of the Party Wall shall be used by the Owners, to the extent necessary, to repair and restore the damage or destruction for which the proceeds are payable. Each Owner agrees to make such repair and restoration whether or not the policy proceeds are adequate for such purposes or whether or not the occurrence resulting in such damage or destruction is covered by insurance. Each Owner hereby waives any rights it may have against the other adjoining Owner on account of any loss or damage to its Unit which arises from any risk covered by fire and extended coverage insurance carried hereunder, whether or not such other adjoining Owner may have been negligent or at fault in causing such loss or damage. Each Owner shall obtain a clause or endorsement in the policies of such insurance which each Owner obtains to the effect that the insurer waives, or shall otherwise be denied, the right of subrogation against the other adjoining Owner for loss covered by such insurance. It is understood that such subrogation waivers may be operative only as long as such waivers are available in the State of Utah and do not invalidate any such policies. If such subrogation waivers are allegedly not operative in the State of Utah, notice of such fact shall be promptly given by the Owner obtaining insurance to the Board and the other Adjoining Owner.

## ARTICLE XIV

### MISCELLANEOUS

14.1 Interpretation of the Covenants. Except for judicial construction, the Sub-Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Sub-Association's construction or interpretation of the provisions hereof shall be

final, conclusive, and binding as to all persons and property benefited or bound by the covenants and provisions hereof.

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

14.3 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Sub-Association shall have the right to adopt rules and regulations with respect to all other aspects of the Sub-Association's rights, activities, and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration.

14.4 General Reservations. Declarant reserves the right to grant, convey, sell, establish, amend, release, and otherwise deal with easements, reservations, exceptions, and exclusions with respect to the Property which do not materially interfere with the best interests of Owners and/or the Sub-Association including, but not limited to, access and utility easements, road easements, pedestrian and equestrian easements, pedestrian and hiking trails, and easements and drainage easements. Declarant further reserves the right to make minor amendments and corrections to the Plat, to alter the boundary of Units or building pads, to combine Units or building pads, to change the size and product type of Units constructed in the Project, the density and number of Units in the Project, and to change the interior design and interior arrangement of a Unit, so long as Declarant owns the affected Unit(s). Such changes shall not materially alter the boundaries of the Common Areas.

14.5 Run with the Land. Declarant for itself, its successors, and assigns, hereby declares that all of the Property shall be held, used, and occupied subject to the provisions of this Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in the Property.

*[Remainder of Page Intentionally Left Blank.]*

IN WITNESS WHEREOF, Declarant has executed this Declaration this 1<sup>st</sup> day of February, 2013.

4 INDEPENDENCE, LLC, a Utah limited liability company

By: DAI Partners, LLC, a Utah limited liability company

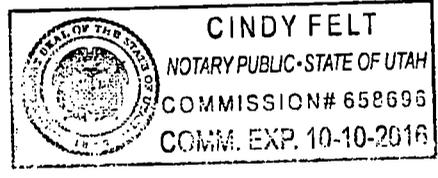
By: [Signature]  
Bryan J. Flamm, Manager

STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of February, 2013, by Bryan J. Flamm, a Manager of DAI Partners, LLC, a Utah limited liability company, the manager of 4 Independence, LLC, a Utah limited liability company.

[Signature]  
Notary Public

My Commission Expires: 10-10-16



**EXHIBIT A**

**(Legal Description of the Property)**

The Property is located in the City of Bluffdale, Salt Lake County, State of Utah, and is more particularly described as follows:

All of Independence at the Point Phase 1, Plat "B", according to the Official Plat thereof, on file in the Salt Lake County Recorder's Office, State of Utah.

**EXHIBIT B**

**(Bylaws of Sub-Association)**

*See attached.*

**BYLAWS**  
**OF**  
**INDEPENDENCE AT THE POINT TOWNHOMES**  
**HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE 1.**  
**DEFINITIONS**

1.01 Declaration.

As used herein, "Declaration" means the Neighborhood Declaration of Covenants, Conditions and Restrictions for Independence at the Point Townhomes, as recorded in the Official Records of Salt Lake County, as may be further amended from time to time.

1.02 Other Definitions.

Unless otherwise defined herein, all capitalized terms used herein shall have the meanings given to them in the Declaration.

**ARTICLE 2.**  
**OFFICES**

Independence at the Point Townhomes Homeowners Association, Inc. (the "Association") is a Utah nonprofit corporation, with its principal office located at 1099 West South Jordan Parkway, South Jordan, Utah 84095.

**ARTICLE 3.**

**VOTING, QUORUM, AND PROXIES**

3.01 Voting. As more fully set forth in the Articles and in the Declaration, the Association shall have two classes of membership, Class A and Class B.

(a) Class A. Class A Members shall be all Owners, except Declarant. Class A Members shall be entitled to one (1) vote for each Unit in which the interest required for membership in the Sub-Association is held. Although each of the multiple Owners of a single Unit shall be a Class A Member, in no event shall more than one (1) Class A vote exist or be cast on the basis of a single Unit. Which of the multiple Owners of a single Unit shall cast the vote on the basis of that Unit is determined under Section 4.4 of the Declaration.

(b) Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to thirty one (31) votes for each Unit in which the interest required for membership in the Sub-Association is held; provided that such number of

votes for each Unit the Class B Member owns shall increase from time to time, if and when the Project is expanded pursuant to Section 13.4 of the Declaration, by an amount equal to the number of additional Units included in the applicable additional phase. The Class B membership shall cease and the Declarant shall become a Class A Member upon the first to occur of the following: (i) the sale and conveyance by Declarant to purchasers of all of the Units contained in the Project (as the Project may be expanded pursuant to Section 13.4 of the Declaration); or (ii) the expiration of fifteen (15) years after the date on which Declarant first conveys to a purchaser fee title to a Unit.

Additional provisions governing the voting of the members of the Association are set forth in the Declaration.

### 3.02 Quorum.

Subject to and except as otherwise required by law, the Declaration, or the Articles, as amended, the presence in person or by proxy of one or more Owners entitled to vote shall constitute a quorum.

### 3.03 Proxies.

Votes may be cast in person or by proxy. Every proxy must be executed in writing by the Owner or such Owner's duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the Association before or at the time of the meeting. No proxy shall be valid after the expiration of eleven months from the date of its execution unless otherwise provided in the proxy.

### 3.04 Majority Vote.

At any meeting of the Owners, if a quorum is present, the affirmative vote of a majority of the votes represented at the meeting, in person or by proxy, shall be the act of the Owners, unless the vote of a greater number is required by law, the Articles, the Declaration, or these Bylaws.

## **ARTICLE 4. ADMINISTRATION**

### 4.01 Annual Meeting.

The annual meeting of the Owners shall be held at a time designated by the Board in the month of February in each year, or at such other date designated by the Board, for the purpose of electing trustees and for the transaction of such other business as may come before the meeting. If the election of trustees shall not be held on the date designated herein for the annual meeting of the Owners, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the Owners to be convened as soon thereafter as may be convenient. The Board may from time to time by resolution change the date and time for the annual meeting of the Owners.

#### 4.02 Special Meetings.

Except as otherwise prescribed by statute or the Declaration, special meetings of the Owners, for any purpose, may be called by the president or by a majority of the trustees and shall be called by the president at the written request of Owners entitled to vote twenty percent (20%) or more of the total votes of all Owners, such written request to state the purpose or purposes of the meeting and to be delivered to the Board or to the president.

#### 4.03 Place of Meetings.

The Board may designate the Association's principal offices or any place within Salt Lake County, Utah, as the place for any annual meeting or for any special meeting called by the Board.

#### 4.04 Notice of Meeting.

Written or printed notice of any meeting of the Owners, stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called, shall be delivered personally, by mail, or by electronic means (i.e. e-mail, text messaging or another similar manner) to each Owner entitled to vote at such meeting not less than thirty (30) nor more than sixty (60) days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Owner at such Owner's address as it appears in the office of the Association, with postage thereon prepaid. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, the Board may set a record date for such determination of Owners, in accordance with the laws of the State of Utah. If requested by the person or persons lawfully calling such meeting, the secretary shall give notice thereof at the expense of the Association.

#### 4.05 Informal Action by Owners.

Any action required or permitted to be taken at a meeting of the Owners may be taken with or without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by the Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted.

### **ARTICLE 5. BOARD OF TRUSTEES**

#### 5.01 Number and Election of Trustees.

The Board of Trustees (the "Board") shall consist of no less than three (3) and no more than five (5) trustees.

There shall be three (3) initial trustees. The term of one of the initial trustees expires at the first annual meeting after incorporation, the term of a second initial trustee expires at the second annual meeting after incorporation, and the term of a third initial trustee expires at the third annual meeting after incorporation. The initial trustees shall have the term of office as

respectively set forth in Exhibit A, attached hereto and incorporated herein, and until their successors are duly elected and qualified or until their prior removal, death, or resignation.

Upon the expiration of each initial staggered term, trustees shall be elected by the Owners entitled to vote at the annual meetings for any number of terms of three (3) years to succeed those whose terms expire. Despite the expiration of a trustee's term, the trustee shall continue to serve until the election and qualification of a successor or until there is a decrease in the number of trustees, or until such trustee's earlier death, resignation, or removal from office.

5.02 Removal of Trustees. Each trustee may be removed, with or without cause, by a majority vote of all Owners of the Units entitled to vote.

5.03 Replacement of Trustees.

i. A vacancy on the Board created by the removal, resignation, or death of a trustee appointed or elected by the Owners shall be filled by the remaining trustees until the next annual meeting of Owners, at which time the Owners shall elect a trustee to fulfill the then-remaining term of the replaced trustee.

ii. Any trustee elected or appointed pursuant to this Section 5.03 shall hold office for the remainder of the unexpired term of the trustee who was replaced.

5.04 Resignations.

Any trustee may resign at any time by giving written notice to the president or to the secretary of the Association. Such resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

5.05 Regular Meetings.

Regular meetings of the Board may be held without call or formal notice at such places within or outside the State of Utah, and at such times as the Board from time to time by vote may determine. Any business may be transacted at a regular meeting. The regular meeting of the Board for the election of officers and for such other business as may come before the meeting may be held without call or formal notice immediately after, and at the same place as, the annual meeting of Owners, or any special meeting of Owners at which a Board is elected.

5.06 Special Meetings.

Special meetings of the Board may be held at any place within the State of Utah or by telephone, provided that each trustee can hear each other trustee, at any time when called by the president, or by two or more trustees, upon the giving of at least three (3) days' prior notice of the time and place thereof to each trustee by leaving such notice with such trustee or at such trustee's residence or usual place of business, or by mailing it prepaid and addressed to such trustee at such trustee's address as it appears on the books of the Association, or by telephone. Notices need not state the purposes of the meeting. No notice of any adjourned meeting of the trustees shall be required.

5.07 Quorum.

A majority of the number of trustees fixed by these Bylaws, as amended from time to time, shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting from time to time. When a quorum is present at any meeting, a majority of the trustees in attendance shall, except where a larger number is required by law, by the Articles, by the Declaration, or by these Bylaws, decide any question brought before such meeting.

5.08 Waiver of Notice.

Before, at, or after any meeting of the Board, any trustee may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a trustee at any meeting of the Board shall be a waiver of notice by such trustee except when such trustee attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

5.09 Informal Action by Trustees.

Any action required or permitted to be taken at a meeting of the trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the trustees entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the trustees.

**ARTICLE 6.**  
**OFFICERS AND AGENTS**

6.01 General.

The officers of the Association shall be a president, a secretary, and a treasurer. The Board may appoint such other officers, assistant officers, committees, and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any officer, agent, or employee are not prescribed by the Bylaws or by the Board, such officer, agent, or employee shall follow the orders and instructions of the president.

6.02 Removal of Officers.

The Board may remove any officer, either with or without cause, and elect a successor at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

6.03 Vacancies.

A vacancy in any office, however occurring, shall be filled by the Board for the unexpired portion of the term.

6.04 President.

The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Association and of the Board. The president shall have the general and active control of the affairs and business of the Association and general supervision of its officers, agents, and employees. The president of the Association is designated as the officer with the power to prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

6.05 Secretary.

The secretary shall:

- i. keep the minutes of the proceedings of the Owners meetings and of the Board meetings;
- ii. see that all notices are duly given in accordance with the provisions of these Bylaws, the Declaration, and as required by law;
- iii. be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board;
- iv. maintain at the Association's principal offices a record containing the names and registered addresses of all Owners, the designation of the Unit owned by each Owner, and, if such Unit is mortgaged, the name and address of each mortgagee; and
- v. in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to it by the president or by the Board. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

6.06 Treasurer.

The treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness, and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board. The treasurer shall receive and give receipts and acquittances for moneys paid in on account of the Association and shall pay out of the funds on hand all bills, payrolls, and other just debts of the Association of whatever nature upon maturity. The treasurer shall perform all other duties incident to the office of the treasurer and, upon request of the Board, shall make such reports to it as may be required at any time. The treasurer shall, if required by the Board, give the Association a bond in such sums and with such sureties as shall be satisfactory to the Board, conditioned upon the faithful performance of his/her duties and for the restoration to the Association of all books, papers, vouchers, money, and other property of whatever kind in his/her possession or under his/her control belonging to the Association. The treasurer shall have such other powers and perform such other duties as may be from time to time prescribed by the Board or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

**ARTICLE 7.**  
**EVIDENCE OF OWNERSHIP, REGISTRATION OF**  
**MAILING ADDRESS, AND LIEN HOLDERS**

7.01 Proof of Ownership.

Any person on becoming an Owner shall furnish to the Association a photocopy or a certified copy of the recorded instrument vesting that person with an ownership interest in the Unit. Such copy shall remain in the files of the Association.

7.02 Registration of Mailing Address.

If a Unit is owned by two or more Owners, such Owners shall designate one address as the registered address. The registered address of an Owner or Owners shall be furnished to the secretary of the Association within ten (10) days after transfer of title, or after a change of address. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized to represent the interests of all Owners of the Unit. If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Unit.

7.03 Liens.

Any Owner who mortgages or grants a deed of trust covering such Owner's Unit shall give the Association written notice of the name and address of the holder of such mortgage or deed of trust and shall file true, correct, and complete copies of the note and security instrument with the Association.

7.04 Address of the Association.

The address of the Association shall be 1099 West South Jordan Parkway, South Jordan, Utah 84095. Such address may be changed by the Board from time to time upon written notice to all Owners and all listed mortgagees.

**ARTICLE 8.**  
**SECURITY INTEREST IN MEMBERSHIP**

Owners shall have the right irrevocably to constitute and appoint a holder of a mortgage or deed of trust their true and lawful attorney-in-fact to vote their membership in the Association at any and all meetings of the Association in which such Owner is entitled to vote and to vest in such holder any and all rights, privileges, and powers that they have as Owners under the Articles and these Bylaws or by virtue of the Declaration. Unless otherwise expressly provided in such proxy, such proxy shall become effective upon the filing of notice by such holder with the secretary of the Association. A release of the mortgage or deed of trust covering the subject Unit shall operate to revoke such proxy. Nothing herein contained shall be construed to relieve Owners, as mortgagors or grantors of a deed of trust, of their duties and obligations as Owners or to impose upon the holder of a mortgage or deed of trust the duties and obligations of an Owner.

**ARTICLE 9.**  
**AMENDMENTS**

9.01 By Trustees.

Except as limited by law, the Articles, the Declaration, or these Bylaws, the Board shall have power to make, amend, and repeal the Bylaws of the Association at any regular meeting of the Board or at any special meeting called for that purpose at which a quorum is represented. If, however, the Owners shall make, amend, or repeal any Bylaw, the trustees shall not thereafter amend the same in such manner as to defeat or impair the object of the Owners in taking such action. Notwithstanding the foregoing, unanimous approval of the trustees shall be required to amend or repeal Sections 5.02 through 5.04 hereof.

9.02 Owners.

Subject to any rights conferred upon holders of a security interest in the Declaration, the Owners may, by the vote of the holders of at least sixty-seven percent (67%) of the votes of the Owners entitled to vote, unless a greater percentage is expressly required by law, the Articles, the Declaration, or these Bylaws, make, alter, amend, or repeal the Bylaws of the Association at any annual meeting or at any special meeting called for that purpose at which a quorum shall be represented.

**ARTICLE 10.**  
**MISCELLANEOUS**

10.01 Fiscal Year.

The fiscal year of the Association shall be such as may from time to time be established by the Board.

10.02 Other Provisions.

The Declaration contains certain other provisions relating to the administration of Independence at the Point Townhomes, a planned residential unit development, which provisions are hereby incorporated herein by reference.

10.03 Officer/Trustee Qualifications.

No individual who is a Class A Member (as defined in the Declaration) may serve as an officer or trustee of the Association if that individual, or if such individual is associated with a Class A Member, the Class A Member associated with that individual, is delinquent in the payment of any dues, fees, assessments, or the like arising out of the Declaration, these Bylaws, or the Association's Articles of Incorporation, or is otherwise in material default of any of the covenants within such Declaration, Bylaws, or the Articles of Incorporation. Provided, that nothing in the previous sentence shall require an officer or trustee of the Association to also be an Owner.

**EXHIBIT A**

**Trustees and Initial Terms**

One Year

Jim Giles

Two Years

Nathan Shipp

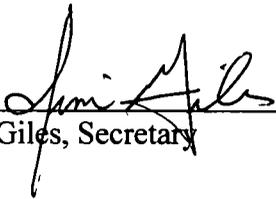
Three Years

Bryan Flamm

SECRETARY'S CERTIFICATE

I, the undersigned and duly elected Secretary of Independence at the Point Townhomes Homeowners Association, Inc., a Utah nonprofit corporation (the "Association"), do hereby certify that the foregoing Bylaws were adopted as the Bylaws of the Association effective as of FEBRUARY 15<sup>TH</sup>, 2013, and that the same do now constitute the Bylaws of the Association.

IN WITNESS WHEREOF, I have hereunto subscribed my name as the Secretary of the Association effective as of FEBRUARY 15<sup>TH</sup>, 2013.

  
\_\_\_\_\_  
Jim Giles, Secretary

1218729