

**Amended and Restated
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
of
The Park Place Subdivision
A Planned Residential Development**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS of The Park Place Subdivision is made on the date evidenced below by The Park Place Homeowners Association, Inc., a domestic non-profit corporation (the "Association"), established to govern the common affairs of the Association's members, protect property values and establish the covenants, conditions, restrictions and rules of the Association.

RECITALS

- A. Association. The Park Place Homeowners Association, Inc., by and through its Board of Directors, is the authorized representative of the owners of the real property described herein and hereby adopts this Amended and Restated Declaration of Covenants, Conditions and Restrictions as approved by the Owners;
- B. Existing Project. The Park Place Subdivision is comprised of the real property described in Article II below (the "Property");
- C. Original Declaration. Certain real property in Salt Lake County, Utah, known as The Park Place Subdivision was subjected to certain covenants, conditions, and restrictions pursuant to a "Declaration of Covenants, Conditions and Restrictions of The Park Place Subdivision" ("Original Declaration"), recorded on April 30, 1974, as Document Entry No. 2617472, Book 3572, Page 320 et. seq., records of Salt Lake County, Utah;
- D. This Amended and Restated Declaration of Covenants, Conditions and Restrictions supersedes and replaces the Original Declaration and any amendments or supplements thereto.
- E. Pursuant to Article X of the Original Declaration, having been given proper notice and holding a vote on the matter, at least two-thirds (2/3) of the Members present in person or represented by proxy, which vote amounted to at least fifty-one (51) percent of all Members, have affirmatively approved the adoption of this document.

NOW, THEREFORE, the Association does hereby establish and impose upon the Property (as hereinafter defined), the following Covenants for the benefit of, and to be observed and enforced by, the Association, its successors and assigns as well as by all purchasers of Lots.

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Book - 9648 Pg - 3236-3259
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
PARK PLACE HOA
1574 PARK PL NORTH
HOLLADAY UT 84121
BY: CDC, DEPUTY - WJ 24 P.

**ARTICLE I
DEFINITIONS**

- 1.1 “Architectural Control Committee,” “Committee” or “ACC” shall mean and refer to the committee appointed by the Board pursuant to Article XI herein to oversee and approve architectural matters of the Association.
- 1.2 “Assessment” as used herein shall mean any regular, special, individual or other assessment levied by the Association against an Owner pursuant to the terms of this Declaration, the Bylaws or applicable law.
- 1.3 “Association” shall mean and refer to The Park Place Homeowners Association, Inc. Said Association shall administer the affairs of all Lots within the Property.
- 1.4 “Board of Directors” or “Board” shall mean and refer to the body responsible for the administration of the Association, elected by the Members and generally serving the same role as a Board of Directors under the Revised Non-Profit Corporations Act.
- 1.5 “Bylaws” shall mean and refer to the Bylaws of the Association, governing the administrative and operational aspects of the Association.
- 1.6 “Common Areas” shall mean and refer to that part of the property which is not included within the Lots (as defined below) and is intended for the common use and enjoyment of the Owners of Lots, including all improvements other than utility lines now or hereafter constructed or located thereon. The Common Areas shall include any recreational facilities, entrance monument(s), streets, parking areas, and any other real property or facilities which the Association owns and/or which the Association acquires a right of use for the benefit of the Association and its members.
- 1.7 “Common Expenses” shall mean and refer to all items, things and sums described herein which are lawfully assessed against the Lot Owners in accordance with this Declaration, the Bylaws, or the Rules of the Association.
- 1.8 “Community Standard” shall mean and refer to the standard of conduct, maintenance, or other activity/aesthetics generally prevailing in The Park Place Subdivision. This Community Standard may be more specifically defined by the Board and shall serve as a standard against which behavioral, architectural and landscaping infractions are determined.
- 1.9. “Declaration” shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions.
- 1.10 “Living Unit” shall mean and refer to a structure or portion of a structure which is designed and intended for use and occupancy as a Single-Family residence, together with all improvements and appurtenances located on the Lot which are used in conjunction with such residence.

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- 1.11 "Lot" or "Lots" shall mean and refer to those portions of the Property that are subdivided parcels of land shown and defined as Lots, exclusive of the Common Areas, as shown on the Plat map of The Park Place Subdivision.
- 1.12 "Member" shall mean and refer to every Owner of a Lot within the Association.
- 1.13 "Mortgage" means any mortgage or deed of trust encumbering any Lot or any of the Common Areas, and any other security interest existing by virtue of any other form of security instrument or arrangement provided that such mortgage, deed of trust or other form of security instrument has been recorded in the Recorder's Office of Salt Lake County.
- 1.14 "Mortgagee" means the person or entity secured by the Mortgage.
- 1.15 "Nuisance" as used and referred to herein shall mean anything which is injurious to health, indecent, offensive to the senses or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property. (see Holladay City ordinance 9.08.005)
- 1.16 "Owner" shall mean, refer to and include the person or persons who are the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to a foreclosure or proceeding in lieu thereof.
- 1.17 "Plat" shall mean and refer to the subdivision Plat of The Park Place Subdivision, A Planned Residential Development, executed and acknowledged on the 14th day of February, 1974, prepared and filed for record in the office of the Salt Lake County Recorder.
- 1.18 "Property" shall mean and refer to the entire tract of real property described in the Plat and further described in Article II of this Amended Declaration.
- 1.19 "Rules" shall mean and refer to the Rules of the Association.
- 1.20 "Family" as used and referred to herein shall mean any number of people living together in a dwelling unit and related by blood, marriage or adoption, and including up to two (2) additional unrelated people." (see part (A) of Section 13.04.230, Holladay City code.)

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**ARTICLE II
PROPERTY DESCRIPTION**

The property which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the following described real property situated in Salt Lake County, State of Utah:

Beginning at a point on the West boundary line of Oak Wood Acres Subdivision, said point being South 66.00 feet and West 330.31 feet from the center of Section 16, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence N 1E 50' E along said West line 470.79 feet; thence N 0E 44' 30" E along said West line 168.71 feet to the North boundary line of said Subdivision; thence N 88E 45' E along said North line 168.68 feet; thence North along an old fence line 477.51 feet; thence S 89E 18' 41" W along said South line 546.59 feet; thence South along and South line 8.0 feet; thence S 89E 56' 25" W along South line 378.97 feet to the Easterly right-of-way line of the Van Winkle Expressway; thence S 19E 32' 35" E along said Easterly line 80.825 feet to a point of a 2789.93 foot radius curve to the left; thence Southeasterly along the arc of said curve and Easterly line 1522.85 feet; thence East 13.55 feet to the point of beginning. Containing 18.967 acres, more or less.

Excluding all presently or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines and related facilities to the extent they are located outside the lots included within the above described tract.

Reserving unto the Association, however, such easements and rights of ingress and egress over, across, through and under the above described tract and any improvements now or thereafter constructed thereon as may be reasonably necessary for the Association, in a manner consistent with the provisions of the Declaration, to improve the lots, common areas and facilities, as necessary or otherwise required. If, pursuant to this reservation, the above described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist.

All of the foregoing is subject to: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all instruments of record which affect the above described tract or any portion thereof, including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way, and all easements and rights-of-way included without limitation the sewer easement recorded on January 26, 1961, as Entry No. 1758482, Book, 1775, Page 596.

**ARTICLE III
BOARD OF DIRECTORS**

The affairs of the Association shall be managed by a Board of Directors, as set forth in the Articles of Incorporation, composed of 7 directors elected to 2 year terms. The Board is authorized to adopt, amend and repeal By-Laws, Rules and resolutions not inconsistent with this Declaration, the Articles of Incorporation or the governing statute.

**ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS**

- 4.1 Membership. Every Owner, upon acquiring title to a Lot, shall automatically become a member of the Association and shall remain a member thereof until such time as his/her ownership of such Lot ceases for any reason, at which time the membership in the Association shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.
- 4.2 Voting Rights. All Members shall be entitled to cast one (1) vote for each Lot owned by them.
- 4.3 Multiple Ownership Interests. In the event that there is more than one Owner of a particular Lot, there is one (1) vote per Lot, as the Owners shall determine amongst themselves. Since a Lot Owner may be more than one person, if only one of such persons is present at a meeting of the Association that person shall be entitled to cast the votes appertaining to that Lot. But if more than one of such persons is present, the vote appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent, shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting.
- 4.4 Meeting of the Members. The requirements, procedures and policies regarding meetings of the members shall be as set forth in the Bylaws of the Association, as may be amended from time to time. An Annual Meeting of the Members shall be held, the time and place to be set by the Board.

**ARTICLE V
PROPERTY RIGHTS IN LOTS**

- 5.1 Use and Occupancy. Except as otherwise expressly provided for in this Declaration or the Bylaws, the Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot. The owner of each Lot shall be bound by and shall comply with the covenants and restrictions contained in this Declaration, the Bylaws, and the Rules of the Association for the mutual benefit of the Owners collectively.
- 5.2 Easements Reserved. In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements are hereby expressly reserved for the benefit of the Association:

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- 5.2.1 Right of Entry. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing the maintenance required pursuant to this Declaration and determining whether or not the Lot is in compliance with this Declaration, the Bylaws or the Architectural Guidelines. Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.
- 5.2.2 Easements for Encroachment. No Living Unit shall encroach upon an adjoining Lot or the Common Areas without the express written consent of the Board. However, if any Living Unit constructed on any Lot whether or not constructed in replacement of the Living Unit previously located thereon (so long as such structure or improvement is in substantially the same configuration and location as such prior structure or improvement) now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist.
- 5.2.3 Utility Easement. The Association or any public utility provider shall have an easement over all Lots and Common Areas for the installation, maintenance, and development of utilities. The easement area and all improvements therein shall be maintained continuously by the Owner of the Lot, or in the case of Common Areas by the Association, in accordance with the provisions of this Declaration, except for those improvements for which a public authority or utility provider is responsible, in any.

ARTICLE VI

PROPERTY RIGHTS IN THE COMMON AREAS AND CONVEYANCES

- 6.1 Members' Easements of Enjoyment. Every member shall have the right and an easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:
- 6.1.1 The right of the Association to establish Rules, including fines for violations thereof, pertaining to the use of the Common Areas, including but not limited to, recreational facilities, streets, and use of Lots. The Association may impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas and may tow improperly parked vehicles. Any such fines, or costs of remedial action, shall be assessed, and collected, against the Owner, as set forth in Article VII herein.
- 6.1.2 The right of the Association to suspend a Member's right to the use of any Common Areas or recreational facilities located on the Property for any period during which an assessment on such Member's Lot remains unpaid. Such a suspension shall continue in effect until the delinquency is cured.
- 6.1.3. The right of the Association to suspend any Owner's voting privileges during any period of time in which a fine or regular, special or other assessment remains unpaid.

- 6.1.4 The right of the Association to borrow money for the purpose of improving the Common Areas and facilities and to mortgage said property, provided that the rights of such Mortgages shall be subordinate to the rights of the members.
- 6.1.5 The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an affirmative vote of at least eighty percent (80%) of all Members entitled to vote in Association matters agree to such a dedication or transfer, and unless written notice of the proposed action is sent to every member not less than ten (10) days in advance.
- 6.1.6 Except as may be otherwise permitted by the provisions of this Declaration, no structure or improvement of any kind shall be erected, placed or maintained on the Common Areas without prior written approval of the Board.
- 6.1.7 All of the foregoing rights specified in this section shall inure to the benefit of, and be enforceable by, the Association against any Member of the Association, or any other person, violating or attempting to violate any of the same, either by action at law for damages or suit in equity to enjoin a breach or violation, or enforce performance of any term, condition, provision rule or regulation, rule or regulation. Further, the Association shall have the right to abate summarily and remove any such breach or violation by any Member at the cost and expense of such Member.
- 6.2 Delegation of Use. Any Member may delegate, in accordance with this Declaration or the Bylaws, his or her right of enjoyment to the Common Areas and facilities to the members of his family, his tenants or contract purchasers who reside on the Property, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.
- 6.3. Waiver of Use. No Member may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release their Lot from the liens and charges hereof, by waiver of the use and enjoyment of the Common Areas and the facilities thereon or by abandonment of his or her Lot other than by sale thereof.
- 6.4 Form of Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:
- 6.4.1 Lot No. ___ contained within The Park Place Subdivision, a Planned Residential Development, as the same is identified in the Plat recorded in Book ___ at page ___ and in the Amended and Restated Declaration of Covenants, Conditions and Restrictions of the Park Place Subdivision, a Planned Residential Development, record in Book ____, at page _____. Together with a right and easement of use and enjoyment in and to the Common Areas described, and as provided for in said Amended and Restated Declaration of Covenants, Conditions and Restrictions.

- 6.4.2 Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.
- 6.5 Title to the Common Area. The Association holds, or shall hold, title to the Common Areas of the Association.

**ARTICLE VII
COVENANT FOR MAINTENANCE ASSESSMENT**

- 7.1 Creation of the Lien and Personal Obligation of Assessments. Each Member, by acceptance of a real estate contract or deed for a Lot, whether or not it shall be so expressed in any such contract or deed, is deemed to covenant and agree to pay to the Association: (1) regular Assessments, a portion of which shall be designated to a reserve account, or charges, such as a transfer fee, (2) special Assessments for capital improvements, such Assessments to be fixed, established and collected from time to time as hereinafter provided; and (3) individual Assessments for expenses benefiting or attributable to fewer than all of the Lots (individual assessments may include "fines" as deemed necessary and authorized in this Declaration). The regular, special and individual Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot against which each such Assessment is made. Each such Assessment together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due which may be incurred prior to or during a collection matter. The personal obligation shall not pass to an Owner's successors in title unless expressly assumed by them
- 7.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and, in particular, for the improvement and maintenance of the properties, services and facilities devoted to this purpose including the enjoyment of the Common Areas, as set forth in this Declaration.
- 7.3 Annual Budget. The Board shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Areas, the maintenance of any other area/property over which the Association has maintenance responsibilities, and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.
- 7.4 Regular Annual Assessments. Regular Assessments of the Association shall be determined and based on an annual amount payable by the Owners, as determined by the Board, based on the needs established in the annual budget. However, the Board, by agreement between Owner and the Board, may permit monthly, quarterly, semi-annual or other payment arrangements so long as the total annual Assessment is paid in full by its due date. If said payments are in default for more than sixty (60) days the Board may declare the entire assessment due and payable.

- 7.4.1 Increases in Assessments. Increases in the regular annual assessments may be proposed by the Board after due consideration to the current and future needs of the Association. Increases not more than 4% above the regular annual assessment for the previous year require a simple majority vote of the Owners present in person or by proxy (or by any other means lawfully permitted to gather votes) at any meeting called for such purpose. Increases above 4% require the approval of 60% of the Owners present in person or by proxy (or by any other means lawfully permitted to gather votes) at any meeting called for such purpose.
- 7.4.2 Reserve Fund. As part of the budgeting process, the Association shall establish and maintain a reserve fund as part of the regular assessment for repairs and replacement of the Common Areas and for any other long term maintenance responsibilities required of the Association. The reserve fund shall be funded by the allocation and monthly payment to such reserve fund of an amount to be determined by the Board, in its best business judgment and sole discretion, from the regular annual Assessment. The fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America, or in any approved and creditworthy Credit Union.
- 7.4.3 Reserve Study/Updates. A study of the reserve account to determine needs and adequacy shall be completed at least once every three (3) years. The Board shall have sole discretion to set the date and time of such study and by whom it shall be conducted. The Board shall then use the study as its guide, adhering to it as closely as possible, in its efforts to fund and use the Reserve account for its intended purposes.
- 7.5 Special Assessments for Capital Improvements. In addition to the regular Assessments, the Association may levy in any calendar year, a special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto. Such assessment shall be approved by two-thirds (2/3) of the votes of the Members who are voting in person or by proxy (or by any other means lawfully permitted to gather votes) at a meeting duly called for this purpose, written notice of which shall be sent to all Members no more than thirty (30) day but not less than ten (10) days in advance of the meeting, setting forth the purpose of the meeting.
- 7.6 Individual Assessments. Any expenses benefiting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefited. Individual Assessments shall include, but shall not be limited to Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or Rules and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any Rules.

- 7.7 Uniform Rate of Assessment. Both regular and special assessments shall be fixed at a uniform rate for all Lots to be collected on a monthly or annual basis, or other periodic basis, as determined by the Board.
- 7.8 Date of Commencement of Regular Assessments and Fixing Thereof. The regular assessments provided for herein shall commence as to all Lots on the first day of the month following the purchase of each Lot to an individual owner. Monthly, annual or other periodic assessments will be payable at times determined by the Board of the Association.
- 7.9 Certificate of Payment. The Association shall, upon demand, furnish to any owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether the regular and special assessments on a specified Lot have been paid, and the amount of the delinquency, if any. The certificate shall be conclusive evidence of payment of any Assessment therein stated as having been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

ARTICLE VIII NON-PAYMENT OF ASSESSMENTS

- 8.1 Delinquency. Any Assessment provided for in this Declaration, which is not paid when due, shall be delinquent. With respect to each Assessment not paid within twenty (20) days after its due date, the Association shall require the owner to pay a late fee charge in a sum to be determined by the Board and such delinquent amount shall bear interest from the date of delinquency at the rate established by resolution of the Board, not to exceed the maximum rate permitted by law. If any such Assessment is not paid within thirty (30) days after the delinquency date, the Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or, foreclose the lien against the Lot (either by judicial or non-judicial foreclosure procedures), and there shall be added to the amount of such Assessment the late charge, interest, and all costs of collection, including reasonable attorney's fees. Each Owner vests in the Association or its assigns the right and power to bring all actions at law or lien foreclosure against such owner or other owners for the collection of such delinquent Assessments.
- 8.1.1 Acceleration. In the event an Owner shall fail to pay any installment before the thirty-first (31st) day after which it is due, the Board may, at its option, declare immediately due and payable the total, remaining amount of the annual Assessment due. Unless said accelerated amount is paid within ten (10) days after written demand therefore is made, the entire accelerated amount shall become a delinquent Assessment for all purposes under this Declaration.
- 8.1.2 Trust Deed for Assessments. By acceptance of a deed for a Lot, each Owner as trustor conveys and warrants to trustee, as selected by the Board, in trust for the Association as beneficiary, with power of sale, the Owner's Lot and all improvements thereon for the purpose of securing payment of all Assessments provided for in this Declaration for purposes of this Article and Utah Code Ann. §§ 57-1-19, *et seq.*, as amended from time to time. Each Owner hereby also grants to

the Association and trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§ 57-1-19, *et seq.*

- 8.2 Foreclosure Sale. Any such foreclosure and subsequent sale as provided for above in Section 8.1 is to be conducted in accordance with the laws of the State of Utah relating to liens, mortgages, and deeds of trust. The Association, through its duly authorized agents, shall have the power to bid on the lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.
- 8.3 Cumulative Remedies. The Assessment lien and the rights of foreclosure and sale there under shall be in addition to all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.
- 8.4 Subordination of Assessment Liens. The lien of the Assessments provided for in this Declaration shall be subordinate to the lien of any first Mortgagees or deeds of trust now or hereinafter placed upon the Lot subject to Assessments, except as provided in 8.4.1 below.
- 8.4.1 The sale or transfer of any Lot pursuant to a Mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, nor from the lien of any future Assessment.
- 8.5 Termination of Right of Access/Use of Common Areas. If an Owner fails or refuses to pay an assessment when due, the Board may, after giving notice and an opportunity to be heard, terminate an Owner's right of access and use of recreational facilities. Before terminating the right of access and use of the recreational facilities, the Board or its agent shall give written notice to the Owner informing the Owner that (1) the right of access and use of the recreational facilities will be terminated if payment of the assessment is not received within the time provided for in the Declaration, Bylaws or Association Rules, which shall be at least forty-eight (48) hours; (2) the notice shall state the amount of the assessment due, including any late fees or interest; and (3) that the Owner has a right to request a hearing within fourteen (14) days after receipt of the notice. If a hearing is requested, the right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered. "Recreational facilities" includes the RV Lot, the use of which may be suspended pursuant to this Section.
- 8.6 Lease Payments by Tenant to Association. If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid. The Board, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant. The notice to the Owner shall state (1) the date certain by which the Association expects full payment; (2) the amount due and owing to the Association, and (3) that the Association will make demand upon the Tenant for future lease payments to be made to the Association if this request is not adhered to.

**ARTICLE IX
OPERATION AND MAINTENANCE**

- 9.1 Maintenance by Owner. Except to the extent that the Association is responsible therefore under Section 9.2 of this Article IX, each Living Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the property and so as not to adversely affect the value or use of any other Living Unit. As provided for above, Living Units include patios and patio slabs.
- 9.2 Operation and Maintenance by Association. To the extent not clarified herein and not inconsistent with the provisions of this Declaration, the Association may, by duly adopted Board Resolution, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities. Such determinations shall be set forth in a Board resolution distributed to all Owners and shall be binding against all owners.
- 9.2.1 Common Areas. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots. This shall include keeping them clean, functional, attractive, and generally in good condition and repair.
- 9.2.2 Living Unit Maintenance. The Association shall provide for such maintenance and repair of the exteriors of the Living Units, including resurfacing of roofs, repainting, water collection devices, such as rain gutters and downspouts, driveway aprons and stucco repair and replacement as may be necessary or desirable to keep the Living Units attractive and generally in good condition and repair, consistent with the Community Standards. Notwithstanding the foregoing, the Association's obligations do not include the replacement of glass, doors, door frames, windows, window frames, patios, garage and carport slabs. In addition, the Association's obligation does not include sealing, repairing or otherwise fixing foundations.
- 9.2.3 Architectural and External Design Matters. Since architectural styles, building materials and landscaping standards, as well as market demand and trends may change from time to time, in performing its obligations concerning maintenance of the Living Units exteriors the Association may change the original materials and colors used in the Property, but in doing so shall maintain the integrity and uniformity of appearance and quality of the project.
- 9.3 Utilities. The Association shall pay for water, sewage, and garbage collection.
- 9.4 Manager. The Association may carry out through a Property Manager, Office Manager, Maintenance Manager or any combination thereof, any of its functions which are properly the subject of delegation. Any manager so engaged may be an independent contractor, an agent, or employee of the Association and shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and terms of the management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

**ARTICLE X
USE RESTRICTIONS**

- 10.1 Residential Use. The Property is zoned R-M (Multiple Family Residential) for multiple family residential use pursuant to Section 13.32.040, Holladay City Code. The Property is a planned unit development; allowed as a conditional use. All Lots and Lot Owners are subject to the uses and restrictions imposed thereby, including, but not limited to, occupancy and parking restrictions. The definition of "Family" shall be that as defined in Section 1.20 of this Declaration. All provisions of this Declaration, the Bylaws and Rules shall be binding upon all Owners, tenants and occupants, their guests and invitees.
- 10.2 Cancellation of Insurance.
Nothing shall be done or kept in any Living Unit, garage or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Property or any part thereof or increase the rate of the insurance on the Property or any part thereof over what the Board, but for such activity or keeping, would pay, without the prior written consent of the Board.
- 10.3 No Violation of Rules. No Owner shall violate the Rules for the use of the Living Units and the Common Areas as adopted from time to time by the Board.
- 10.4 Business or Commercial Use of Living Unit. No commercial trade or business may be conducted in or from any Living Unit unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Living Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming on the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not create a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents.

**ARTICLE XI
ARCHITECTURAL CONTROL**

- 11.1 Architectural Control Committee. The Board of the Association shall appoint an Architectural Control Committee to consist of no less than three (3) members and no more than five (5) members, the function of which shall be to assure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such Committee is unable to function or volunteers are not forthcoming, the Board shall function as the Architectural Control Committee
- 11.2 Submission to Committee. No Living Unit, accessory or addition to a Living Unit which is visible from the Common Areas, or other improvement of a Lot which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit shall be performed, unless complete plans and specifications therefore have first been submitted to and approved by the Architectural Control Committee. The Board will make final approval, rejection, or other determination in the event unresolved or contested issues exist

- 11.3 Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the Property conform to and harmonize with existing surroundings, structures and the Community Standards.
- 11.4 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period, then approval of the materials submitted shall be deemed to have been given by the Committee; the Board retains final authority to approve or disapprove such plans and specifications.
- 11.5 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion.
- 11.6 No Liability for Damage. Neither the Committee, nor the Board, nor its agents shall be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article and shall be indemnified and held harmless against any damages or costs resulting from any action brought against them.

ARTICLE XII PARTY WALLS

- 12.1 General Principles. Each wall constructed as part of the original construction of the Living Units which is located on a boundary line common to two Lots, shall constitute a party wall. Except as herein modified or expressed, all legal and equitable principles relating to party walls shall govern and apply to such walls.
- 12.2 Maintenance. The cost of reasonable maintenance and repair of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Costs associated with maintenance or repairs benefiting only one owner (such as interior painting or redecorating) shall be borne solely by the Owner benefited.
- 12.3 Destruction. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. Any Owner thereafter making use of the wall shall contribute to the cost of restoration in proportion to such use; provided, however, that the foregoing portion of this sentence shall not prejudice or limit any Owner's right to obtain a larger contribution under any legal or equitable principle regarding liability for negligent or willful acts or omissions.
- 12.4 Notwithstanding any other provision of this Article, any Owner who by its negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- 12.5 The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to each Owner's successors in title.
- 12.6 In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the Board shall act as arbitrators to determine the rights of the parties, which decision shall be made by the majority of the Board. The Board's determination shall be binding upon the parties.

**ARTICLE XIII
COMPLIANCE AND ENFORCEMENT**

13.1 Compliance. Each Owner, tenant or occupant of a Living Unit shall comply with the provisions of this Declaration, the Bylaws and the Rules adopted pursuant thereto and any applicable statute or ordinance. Failure to comply therewith shall be grounds for an action or lawsuit maintainable by the Association or an aggrieved Owner, or other alternative dispute resolution methods described below.

13.2 Agreement to Encourage Resolution of Disputes without Litigation.

13.2.1 The Association, the Board, Owners and all other persons subject to this Declaration agree that it is in the best interests of all concerned to encourage the amicable resolution of disputes involving the Association without the emotion and financial costs of litigation. Accordingly, each of the foregoing agrees not to file suit in any court with respect to a Claim (as defined in subsection 13.2.2 below), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 13.2.2 in a good faith effort to resolve such Claim.

13.2.2 As used in this Section 13.2, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (a) The interpretation, application, or enforcement of the Governing Documents;
- (b) The rights, obligations, and duties of anyone arising from the Association's Declaration, Bylaws or Rules.
- (c) The design or construction of improvements within the Association; or decisions made by the Board or the Architectural Control Committee.

EXCEPT, however, that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.2.3 below:

- (a) Any action or suit by the Association to collect assessments, foreclose its lien, or suit to collect any other amounts due from any Owner, including fines;
- (b) Any action by the Association to terminate utility services, deny access to the Common Areas, or deny voting privileges or to demand that a tenant pay their rent to the Association as provided for herein;
- (c) Any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;
- (d) Any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Association's Declaration or Bylaws;
- (e) Any suit in which any indispensable party is not bound hereby; and,

- (f) Any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required in Section 13.2.3 below, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

13.2.3 Dispute Resolution Procedures.

- (a) Notice. A person asserting a Claim (“Claimant”) against another person subject to this Section (“Respondent”) shall give written notice to each Respondent and to the Board stating plainly and concisely:
- (1) The nature of the Claim, including the persons involved and the Respondent’s role in the Claim;
 - (2) The legal basis of the Claim (i.e., the specific authority out of which the Claim arose);
 - (3) The Claimant’s proposed resolution or remedy; and,
 - (4) The Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.
- (b) Negotiation. The Claimant(s) and Respondent(s) shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.
- (c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice described in Section 13.2.3(a) above, (or within such other period as the parties may agree upon), the Claimant(s) shall have thirty (30) additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Salt Lake City area.

If the Claimant(s) does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant(s) shall be deemed to have waived the Claim, and the Respondent(s) shall be relieved of any and all liability to Claimant(s) (but not third parties) on account of such Claim.

If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings, indicating that the parties are at an impasse and that mediation was terminated. The Claimant(s) shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate, subject to Section 13.2.

Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

- (d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

13.2.4 Arbitration. Any claim or controversy that cannot be resolved pursuant to Sections 13.2.2 and 13.2.3 between any person bound by this Declaration and the Association or a representative of the Association that arises out of or relates to the ownership and use of a Living Unit or the Common Areas of the Association, other than actions brought by and on behalf of the Association for (1) the collection of assessments and fines, or (2) respecting the enforcement of the Declaration by or on behalf of the Board, shall be submitted to arbitration according to regulations prescribed by the Association's Board. In the absence of any such regulations, arbitration shall proceed pursuant to the Commercial Arbitration rules of the American Arbitration Association ("AAA"), although such arbitration need not proceed with the AAA, each Owner, by acquiring or maintaining an ownership interest in the Association, agrees to arbitrate all such disputes according to this provision and the regulations prescribed by the Board pursuant to this provision, and agrees that judgment on the award rendered by the arbitration may be entered in any court having jurisdiction thereof.

13.3 Remedies. Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board, acting on behalf of the Association, the right, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do, any or all of the following after giving notice and an opportunity to be heard:

- (a) To enter the Lot which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

- (b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

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- (c) To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board, which fines shall be collected in the same manner as an unpaid Assessment as hereinabove provided, a copy of which has been delivered to each Owner, mailed to the mailing address of Lot or mailed to the mailing address designated by the Owner in writing to the Association;
 - (d) To terminate the right to receive utility services paid for out of assessments, if applicable, or, to terminate the right of access to and use of recreational and service facilities of the Association, until the correction of the violation has occurred; or
 - (e) The right of the Association to suspend the voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the published Rules or of this Declaration.
 - (f) Subject to the requirements of Section 13.2, bring suit or action against the Owner(s) on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto.
- 13.4 Action by Owners. Subject to the requirements of Section 13.2, the Bylaws or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.
- 13.5 Injunctive Relief. Subject to Section 13.2, nothing in this section shall prevent an Owner, the Association, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.
- 13.6 Notification of First Mortgagee. The Board shall notify in writing any first Mortgagee of any individual Lot of any default in performance of the terms of this Declaration by the Lot Owner which is not cured within sixty (60) days, provided such Mortgagee has requested in writing to be so notified.

ARTICLE XIV INSURANCE

- 14.1 Association Insurance. The Association shall obtain and keep in full force and effect insurance coverages described in this Article. Insurance coverage shall be secured from companies licensed to do business in the State of Utah, with a rating of "A" or better from Bests Insurance Report. Each policy of insurance obtained by the Association shall, if possible, include: (a) a standard mortgagee clause commonly accepted by private institutional mortgage investors in the areas; (b) a waiver of the insurer's subrogation rights with respect to the Association, the Board, the Owners and their respective servants, agents and guests with respect to claims arising from areas to be insured by the Association; (c) a provision that the insurance cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners; (d) a provision that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners; (e) that a mortgagee endorsement clause providing that there shall not be less than ten (10) days notice of reduction or cancellation relating to any of the policies. Premiums for the Association's insurance shall be a common expense.

- 14.2 Owner's Individual Insurance. All Owners shall obtain additional insurance at his/her own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Association. The Association shall not insure the Living Unit (as defined by this Declaration) or the Owner's personal property located within the Living Unit. The Owners shall insure his/her Living Unit for all improvements made thereto. Individual Owners, along with their insurance providers, are primarily responsible to pay for damages sustained within their Living Units or originating from within their Living Units and damaging their Living Units or other Living Units and/or the common areas (as opposed to originating from the common areas) caused from negligence or intentional misconduct of the Owners, their tenants, guests, invitees or agents. In such cases, the Owner's policy shall be primary. It is not the purpose nor the intent of this Article XIV that the Association insure that which is the responsibility of the Owners nor pay for damages, if any kind, caused by the negligence or fault of any Owner, their tenants, guests, invitees or agents. Insurance proceeds, if any, from the Association's insurance policy shall be subordinate to the responsibility of the Owner and their insurance provider. A certificate of insurance and evidence of adequate property insurance shall be provided to the Association upon request.
- 14.3 Liability Insurance. Liability insurance coverage shall be secured from companies licensed to do business in the State of Utah, with a rating of "A" or better from Bests Insurance Report. The Association shall obtain and maintain Public Liability Insurance to insure the Association, the Board, the Managing agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried in connection with properties of comparable character and usage in the Salt Lake County, State of Utah, nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced. The policy shall provide that the policy may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days prior written notice thereof to each insured. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.
- 14.4 Hazard Insurance. The Association shall obtain insurance on all insurable improvements on the Common Areas against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief in an amount sufficient to cover the full replacement cost of such improvements in the event of damage or destruction.

- 14.5 Fidelity Coverage. The Association shall maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. In that event, such fidelity bonds shall:
- 14.5.1 Name the Association as an obligee;
 - 14.5.2 Be written in an amount based upon the best business judgment of the Association but in no event be less than a sum equal to three months' assessment on all Lots;
 - 14.5.3 Contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar express; and;
 - 14.5.4 Provide that a policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the insured.
- 14.6 Further General Requirements. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:
- 14.6.1 A waiver of the insurer's right of subrogation against the Association, and their respective directors, officers, agents, employees, invitees and tenants;
 - 14.6.2 That it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners;
 - 14.6.3 That it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and
 - 14.6.4 As stated above, that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.
- 14.7 Review of Insurance. The Board shall periodically, and whenever requested by Owners entitled to exercise at least twenty percent (20%) of the outstanding votes in the Association, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Living Unit and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner and any Mortgagee.
- 14.8 Other Insurance Provisions. All insurance required pursuant to this Article shall be written by insurers licensed in the State of Utah and that are members of the Utah Property and Casualty Insurance Guaranty Association. Notwithstanding anything in this Article to the contrary, any insurance required to be obtained by the Association pursuant to this Article shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities have the same or similar characteristics of the Common Areas and Living Units or risks being insured.

- 14.9 Deductible. For all claims against the Association's insurance policy for which the damage or injury is caused or due to the Common Area or Areas over which the Association has responsibility, the Association shall pay the deductible. If, however, for reasons not contemplated in Section 14.2 above, the Association's insurance is obligated to cover a loss which was attributable to the negligence or fault of an Owner, its tenants, guests, invitees or agents, then the "at fault" Owner shall pay the deductible. Failure to pay the deductible within thirty (30) days shall entitle the Association to collect said unpaid deductible in the same manner as an unpaid assessment.

ARTICLE XV RIGHTS OF MORTGAGEES

- 15.1 As used in this Article, the term "Mortgage" shall mean and include both a first Mortgage on any Lot and first deed of trust on any Lot, and the term "Mortgagee" shall mean and include both a Mortgagee under a first Mortgage on any lot and a beneficiary under a first deed of trust on any Lot.

From and after the time a Mortgagee makes a written request to the Association therefore, the Association shall notify such Mortgagee in writing in the event that the owner of the Lot encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

The lien on a Lot for unpaid Assessments provided for herein shall be subordinate to the Mortgage affecting such Lot, and the Mortgagee there under which comes into possession of the Lot shall take the same free of such lien for unpaid Assessments, but only to the extent of Assessments which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure (except for claims for a pro rata share of such prior assessments resulting for a pro rata reallocation thereof to all Lots including the Lot in which the mortgagee is interested).

Unless ninety percent (90%) of the Mortgagees (based upon one vote for each Mortgagee) of the individual Lots have given their prior written approval, neither the Association nor any other party shall be entitled by act, omission or otherwise:

- A. To alter the provisions pertaining to the uniform rate of Assessments;
- B. To abandon, partition, subdivide, encumber, sell, dedicate, or transfer all or any part of the Common Areas;
- C. To seek to abandon or materially alter the arrangement which is established by the Declaration;
- D. To change, waive, abandon, or cease enforcement of the arrangement created under this Declaration concerning architectural control, party walls, or maintenance of the exteriors of Living Unit and of the Common Areas.
- E. To fail to maintain the fire, casualty, and extended coverage insurance provided for in this Declaration.

- F. To use proceeds of such insurance for purposes other than the repair, replacement or reconstruction of improvements comprising a part of the Common Areas;
- G. To amend this Article XV.

Any mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association.

ARTICLE XVI AMENDMENTS

- 16.1 How Proposed. Amendments to the Declaration shall be proposed by either a majority of the Board or by Owners holding thirty percent (30%) or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment
- 16.2 Approval Required. Except as otherwise provided in Sections 16.3 and 16.4 of this Article or by other provisions of this Declaration, this Declaration may be amended if such amendment is approved by the affirmative vote of at least two-thirds (2/3) of those Members present in person or represented by proxy at a meeting duly called for such purpose and if that affirmative vote amounts to at least fifty-one (51%) of all Members.
- 16.3 Additional Approval Requirements. No amendment may change the boundary of any Lot or the method of determining liability for Common Expenses or right to common profit, or voting rights of any Lot unless the Owners of the affected Lots unanimously consent to the amendment.
- 16.4 Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president and secretary of the Association as being adopted in accordance with this Declaration, is acknowledged and is recorded in the Recorder's Office of Salt Lake County, Utah.

ARTICLE XVII MISCELLANEOUS

- 17.1 Duration. This Declaration perpetually shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this Declaration is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within the Property and the Owners thereof for successive, additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever.

- 17.2 Invalidity. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.
- 17.3 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be joint and several and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.
- 17.4 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration, the Bylaws and Rules adopted by the Association restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.
- 17.5 Nonwaiver of Right to Enforce. Failure by the Association or any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. In addition, no restriction, condition, obligation or provision contained in this Declaration or Rules adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association or Owner as to any similar matter.
- 17.6 Notice of Sale, Mortgage, Rental, or Lease. Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the Association of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

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IN WITNESS WHEREOF, The Park Place Homeowners Association executed this Declaration this 30th day of September, 2008.

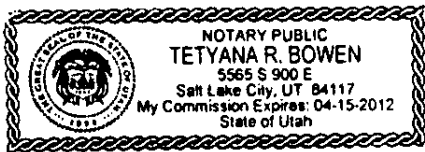
THE PARK PLACE HOMEOWNERS ASSOCIATION

By: *Holly Birich*
Holly Birich, President

By: *Alan D. Eastman*
Alan D. Eastman, Secretary

STATE OF UTAH)
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County of Salt Lake)

The foregoing instrument was acknowledged before me on this 30 day of September 2008 by Holly Birich and Alan D. Eastman, President and Secretary, respectively, of The Park Place Homeowners Association.



T. Bowen
Notary Public for Utah
My Commission Expires 4-15-2012