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For RIVER CROSSING LLC

**DECLARATION OF
EASEMENTS, COVENANTS, CONDITIONS & RESTRICTIONS
FOR THE
RIVER CROSSING
TOWN HOMES**

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**DECLARATION OF
EASEMENTS, COVENANTS, CONDITIONS & RESTRICTIONS
FOR THE
RIVER CROSSING TOWN HOMES**

THIS is a Declaration of Easements, Covenants, Conditions and Restrictions for the River Crossing Town Homes, a planned unit development located in the City of Logan, Cache County, Utah.

RECITALS

A. On March 1, 2008, the Declarant caused the Declaration of Easements, Covenants, Conditions, and Restrictions for the River Crossing Town Homes to be recorded in the Office of the Cache County Recorder as Entry No. _____, thereby establishing a planned unit development commonly known as River Crossing.

DECLARATION

All of the Property described on **Exhibit A**, which is attached hereto and incorporated herein by this reference, shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the plat which has been recorded for the Property. This Declaration and the Plat shall be construed as covenants of equitable servitude; shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

**ARTICLE 1
DEFINITIONS AND CONCEPTS**

The following definitions and concepts shall control in this Declaration:

1.1 **“Articles”** means and refers to the Articles of Incorporation of River Crossing Town Home Owners Association, and to any amendments, supplements, or restatements of the Articles. The purpose of the Articles is to establish the Association as a non-profit corporation under Utah law.

1.2 **“Association”** means River Crossing Town Home Owners Association, a Utah no-profit corporation, its successors and assigns.

1.3 **“Bylaws”** means and refers to the Bylaws of River Crossing Town Home Owners Association. The purpose of the Bylaws is to govern the Association’s internal affairs, such as (for purposes of example but not limitation) voting, elections, and meetings.

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1.4 **“Common Area”** means and refers to all real property, including the improvements thereto and facilities thereon, which the Association owns, leases, or otherwise holds possessory or use rights in, at any given time, for the common use and enjoyment of the Owners. Common Area may be designated on the Plat or otherwise established as provided for in this Declaration.

1.5 **“Common Expense”** means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.6 **“Community”** or **“Property”** means that certain real property herein before described, and such annexations and additions thereto as may hereafter be subjected to the Declaration, and, where the context requires, includes and improvements thereon.

1.7 **“Community Association Act”** means the Utah Community Association Act, Title 57, Chapter 8a of the Utah Code, and any amendments thereto.

1.8 **“Declarant”** means River Crossing Town Homes L.L.C, A Utah Limited Liability Company, and its successors and assigns.

1.9 **“Declaration”** means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Cache County Recorder.

1.10 **“Director”, “Board of Directors”, or “Board”** means the governing body of the Association.

1.11 **“Governing Documents”** means, collectively, this Declaration, the Articles, the Bylaws, and any amendments or supplements thereto, and includes any rules, regulations, and resolutions established pursuant to the authority of the Declaration, Articles or Bylaws.

1.12 **“Limited Common Area”** means and refers to a portion of the Common Area which has been designated for the primary or exclusive use of a particular Owner of Owners. Generally, Limited Common Area, as a portion of Common Area, is owned by the Association but reserved for the use and enjoyment of the Owner or Owners to whose Unit the Limited Common Area is adjacent or appurtenant. Limited Common Area may be designated on the Plat or otherwise established as provided for in this Declaration.

1.13 **“Lot”** means each separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership, but specifically excludes the Common Area and Limited Common Area.

1.14 **“Member”** means and is synonymous with the terms **“Owner”** and **“Unit Owner”** and is used herein and in the Bylaws and Articles as a means to identify the Unit Owners as members of the Association.

1.15 **“Mortgage”** means a mortgage, deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.16 **“Mortgagee”** means and refers to a lender holding a first Mortgage or deed of trust.

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1.17 "Owner" means the entity, person, or group of persons owning fee simple title to any Lot which is within the Property. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one "Owner". The term "Owner" includes contract purchasers but does not include persons who hold any interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership.

1.18 "Plat" means the subdivision Plat for the Property, prepared and certified by a Utah Registered Land Surveyor, executed and acknowledged by Declarant, accepted and approved by the City of Logan, and filed in the Office of the Cache County Recorder concurrently with the Declaration. The term Plat includes any amendments or replacements thereof, or additions thereto.

1.19 "Property" or "Community" means that certain real property herein before described, and such annexations and additions thereto as may hereafter be subjected to this Declaration, and, where the context requires, includes any improvements thereon.

1.20 "Unit" means a structure that is designed, constructed, and intended for use or occupancy as a single family residence, with or without walls or roofs in common with other single family dwellings. When the term "Unit" is used it includes fee title to real property lying directly beneath the Unit structure, within the Lot boundary lines. This however, is not all the Lot in some instances as there may be Lot boundary outside the Unit walls. Where the context requires, such as provisions on lien rights and enforcement, the term Unit shall include the Lot

1.21 "Unit Owner" means and is synonymous with the term "Owner".

ARTICLE 2 PROPERTY RIGHTS

2.1 **Owner's Acknowledgement; Notice to Purchasers.** All Owners are given notice that the use of their Units and Common Area and Limited Common Area is limited by the covenants, conditions, restriction, easements, and other provisions in the Governing documents, as they may be amended, expanded, or modified from time to time. Each Owner, by acceptance of a deed for their Lot, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by said covenants, conditions, restrictions, easements, and other provisions in the Governing Documents. All purchasers of Units are on notice that the Association may have adopted changes to the Governing Documents that might differ from those any purchaser might receive from or have disclosed by the Owner from whom the purchaser is purchasing his or her Unit. Copies of current Governing Documents may be obtained from the Association.

2.2 **Units.**

(a) **Ownership.** Each Unit is owned in fee simple title by the Owner, subject to the covenants, conditions, restrictions and easements in this Declaration and other provisions of the Governing Documents.

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(b) **Activities within Units.** No rule shall interfere with the activities carried on within the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create danger to the health or safety of occupants of other Units, that generates excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance, all as may be determined by the Board or any committee designated by the Board of Directors to make such determinants, in their sole discretion.

(c) **Household Composition.** No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit, on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) **Exteriors of Units.** The exteriors of Units, including exterior walls and roofs, are hereby designated as Limited Common Area for purposes of architectural control and regulation of use.

2.3 **Common Areas.**

(a) **Rights of Use and Rules and Regulations Concerning the Common Area.** Every Unit Owner shall have a right and easement of use and enjoyment in and to the Common Area which easement shall be appurtenant to and shall pass with the title to every Unit, subject to the Governing Documents. The Board shall have the right to establish and enforce rules and regulations governing the use of the Common Area, including but not limited to rights of use, hours of use, delegation of use, and standards of conduct.

(b) **Board Authority and Rights in the Common Area.** The Board shall have the right for and on behalf of the Association, to:

(i) enter into agreements or leases which provides for use of the Common area by a similar association in consideration for use of common areas and facilities of the other association or for cash consideration, or for use by third parties for cash consideration;

(ii) with the approval of at least seventy-five percent (75%) of Unit Owners to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility;

(iii) grant easements for public utilities or other public purposes consistent with the intended use of the Common Area;

(iv) take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure; and

(v) take such other actions with respect to the Common Area which are authorized by or otherwise consistent with the Governing Documents.

2.4 **Limited Common Area.**

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(a) **Designation.** Limited Common Area may be designated on the Plat or otherwise designated, depicted or described in the Declaration or in any supplemental declaration or any exhibit thereto.

(b) **Rights of Use and Rules and Regulations Concerning the Limited Common Area.** Each Unit Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas reserved and designated exclusively for the use of his Unit, subject to the rights of the Declarant and the Board as set forth in the Governing Documents. The right of exclusive use and occupancy does not include the right to repaint, remodel, erect structures upon or attach and apparatus to the Limited Common Area without the express written consent of the Board or the ACC, as the case may be.

(c) **Board Authority and Rights in Limited Common Area.** The Board's right of regulation in the Limited Common Area includes all rights it possesses with respect to the Common Area which are not inconsistent with exclusive use to a particular Unit or Units to which the Limited Common Area is assigned, and includes, but is not limited to, the right to regulate and control architectural and aesthetic appearances of the Limited Common Area and any portion of a Unit which has been designated as Limited Common Area.

2.5 **Delegation of Use.** Any Unit Owner may delegate his right of enjoyment of the Common Area to the members of his family, his tenants, guests, licensees and invitees, but only in accordance with the applicable rules and regulations of the Association and other Governing Documents. The Board may, by rule, require Unit Owners to forfeit their right of use in Common Area for so long as the Unit Owner has delegated his right of use in the Common Areas to his or her tenant. Damage caused to the Common Area and facilities by a Member, shall create a debt to the Association. Debts owned to the Association as a result of damage to the Common Area and facilities shall be a specific assessment charged to the Unit Owner.

ARTICLE 3 ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

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

3.2 Voting Rights; Classes

(a) **Classes of Voting Membership.** Every Member is entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, the group of such persons shall be a Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast at any Association meeting by any such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at the meeting, by another co-Owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

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3.3 Change of Corporate Status. The Association has been set up and established as a non-profit corporation under Utah law. However, the continuing existence and viability of the Association is not vested in its corporate status. During any period in which the Association is not incorporated or otherwise has a change of corporate state (e.g., involuntary dissolution under the Utah Nonprofit Corporation Act for failure to file for corporate renewal, the Governing Documents shall nevertheless continue to be effective as the Governing Documents of the Association, and the Association, and the Board, and all officers and committees operating under the authority of the Governing Documents shall have all rights, power, and authority granted therein, and no Unit owner may escape or avoid any assessment, charge, lien, rule or other matter contained in the Governing Documents by virtue of such change or corporate status. In the case on non-incorporation, the board is authorized, to the extent it deems necessary, and without approval of the Members, to re-incorporate under a same or similar name and such corporation shall be deemed the successor to the Association. In the event the Board does not reincorporate, the Association shall continue to operate and function under the Governing Documents as an unincorporated association.

3.4 Validity of Votes and Consents. Any consent or vote given by a Unit Owner on any matter in the Governing Documents shall be valid for a period of ninety day, and shall be binding on any subsequent Unit Owner who takes title of the Unit during that period of time.

3.5 Indemnification. The Board, and each member thereof, shall be indemnified by the Association against any loss, damage, claims or liability, including reasonable attorney fees, suffered or incurred by reason of such position, except to the extent such damage, claim, loss or liability is covered by any type of insurance; provided, however, that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with, any claim or liability arising out of that persons own willful misconduct or gross negligence.

3.6 Rulemaking Authority. The Board may, from time to time, subject to the provisions of the Governing Documents, adopt, amend and repeal rules and regulations governing, among other things, use of any Common Area, parking restrictions and limitations, limitations upon vehicular travel within the Community, and restrictions on other activities or improvements on the Property which, in the opinion of the Board, create a hazard, nuisance, unsightly appearance, excessive noise, or offensive smell.

3.7 Notice, Promulgation of Rules. A copy of the rules and regulations, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may, but need not be, recorded. Upon such mailing or other delivery, said rules and regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. IN addition to or in lieu of providing notice by mail, the Board may provide notice by electronic means such as electronic mail (email) to Unit Owners and may require that Unit Owners, in addition to keeping the Board informed as to their current mailing address, maintain a current email address with the Board for such purposes.

3.8 Management Agreement; Property Manager. The Board may engage for the Association the services of a property manager to perform such duties and services as the Board shall authorize. The Board may delegate to and otherwise authorize the property manager to perform those services to which the Board itself may perform under the Governing Documents or the Act, and those services to which the Act otherwise authorizes a manager to perform. Any contract or agreement for services entered into the Board for and on behalf of the Association and the property manager shall not exceed a term of two (2) years. Fees, costs, and other charges of the property manager shall be Common Expenses. The property manager may also provide services to individual Unit Owners, such as leasing individual Units as may be determined between the property manager and the Unit Owner;

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provided however, that services performed for individual Unit Owners which are not performed for the Association shall not be Common Expenses, but shall be charged to such Unit Owners as the Unit Owners and the property manager may determine.

ARTICLE 4 FINANCES AND ASSESSMENTS

4.1 Assessments; Authority. The Association is hereby authorized to levy assessments against the Owners as provided for in the Governing Documents or by other applicable law. The following are the types of assessments that may be levied by the Association, which are more particularly describe below: (1) annual assessments or charges; (2) special assessments; (3) specific assessments; (4) emergency assessments; (5) any other amount or assessment levied or charged by the Board pursuant to this Declaration; and (6) interest, costs of collection and reasonable attorney fees, as hereinafter provided.

4.2 Creation of Lien and Person Obligation of Assessments. Each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association all assessments and charges, however denominated, which are authorized in the Governing Documents. All such amounts shall be a charge on the Unit and shall be a continuing Lien upon the Unit against which each such assessment or amount is charged, which lien shall arise when the Owner fails or refuses to pay an assessment when due. Such assessments and other amounts shall also be the person al obligation of the person who was the Owner of such Unit at the time when the assessments became due. No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his nit, or any other means. The obligation to pay assessment is a separate and independent covenant on the part of each alleged failure of the Association, the Board, or Declarant to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

4.3 Purpose of Assessments. The assessments levied by the Association shall be used to advance the purposes for which the Association was formed, as set forth and articulated in the Governing Documents. The assessments may provide for, but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and construction or acquiring additions to the Common Area and/or roadways; the payment of administrative expense of the Association; the payment of insurance deductible amounts; the establishment of capital and operational reserve accounts; the payment of professional services deemed necessary and desirable by the Board; payment of costs for pressurized irrigation, basic coverage cable television and Internet access, and other amounts required by this Declaration or that the Directors shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Directors, for the payment of other charges including (without limitation) maintenance, management, and utility charges.

4.4 Annual Assessments; Budgeting.

(a) **Adoption of Budget.** At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expense for the Year, for the purpose of calculation and establishing the annual assessments for the subsequent fiscal year. Annual assessments for Common Expenses shall be based upon the estimate net cash flow of the Association to cover items including, without limitation, the costs of routine maintenance and operation of the Common Area; expense

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of management; premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, and common lighting within the Common Area; routine renovations within the Common Area; wages; common water and utility charges for the Common Area; legal and accounting fees; management fees; expense and liabilities from a previous assessment period; the payment of any basic cable television and/or Internet services; the supplementing of the reserve fund for general, routine maintenance, repairs, and replacement of the Common Area.

(b) **Notice of Budget and Assessment.** The Board shall send a copy of the canal budget, together with notice of the amount of the annual assessment to be levied pursuant to such budget, to each Owner at least thirty (30) days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved in writing by Members representing at least seventy-five percent (75%) of all eligible votes in the Association. Any such petition must be presented to the Board within ten (10) days after notice of the budget and assessment. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings pursuant to the Bylaws. Unless the budget for the assessment is disapproved by the Members as set forth above, the Board is thereafter authorized to levy the assessment as provided for herein.

(c) **Failure or Delay in Adopting Budget.** The failure or delay of the Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of Common Expenses and in the event of such failure or delay all Owners shall continue to pay assessments on the same basis as during the last year for which an assessment which is due on the first day of the next payment period which begins more than thirty (30) days after such new annual adjusted budget is adopted and the Owners receive notice as provided herewith.

(d) **Automatic Budget Approval.** Notwithstanding the foregoing, if the budget proposed by the Board will increase the annual assessment no greater than five percent (5%) more than the previous annual assessment, then such budget and corresponding annual assessment shall be automatically approved and effective up thirty (30) days notice.

(e) **Maximum Annual Assessment.** Notwithstanding the foregoing, if the budget proposed by the Board will increase the annual assessment more than fifteen percent (15%) above the previous annual assessment, then such budget and corresponding annual assessment shall be approved by a majority of Members entitled to vote at a meeting duly called for that purpose.

(f) **Adjustment of Budget and Assessment.** The Board may revise the budget and adjust the annual assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth in this Section 4.4b, provided however, that such an adjustment is exempt from the requirements of Section 4.4b if the adjustment would either decrease the annual assessment or increase the annual assessment by no greater than 3.25%.

4.5 **Special Assessments.** In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only to cover unbudgeted expense or expense in excess of those budgeted, including but not limited to defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of Common Area or Limited Common Area and any structures, fixtures and personal property related thereto. Any such special assessment may be levied against all Members if such special assessment is for Common Expenses. Except as otherwise provided in the Declaration, any special assessment shall

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require the affirmative vote or written consent of a majority of Members, if a Common Expense. Special assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal years in which the special assessments is approved.

4.6 Specific Assessments. The Association shall have the power to levy specific assessments against a particular Unit to cover the costs incurred in bringing any Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying and specific assessment under this subsection.

4.7 Emergency Assessments. Notwithstanding anything contained in this Declaration, the Board, without Member approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition of collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the emergency assessment. If such expenditure was created by an unbudgeted utility maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution, if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual assessment. An emergency is one in which the Board finds: (a) an expenditure, in its discretion, required by an order of a court, to defend the Association in litigation, or to settle litigation; (b) an expenditure necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered; (c) an expenditure necessary to repair, maintain, or cover actual Association expense for the Property or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increase in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or (d) such other situations in which the Board finds that immediate action is necessary and in the best interests of the Association.

4.8 Uniform Rate of Assessment. Unless otherwise provided for in this Declaration of elsewhere in the Governing Documents, assessments must be fixed at a uniform rate for all Units.

4.9 Payment, Due Dates.

(a) The assessments provided for herein shall commence to accrue against a Unit upon conveyance or the Unit to a bona fide purchaser, adjusting the amount of such assessment according to the number of months remaining in the fiscal year.

(b) Due dates shall be established by resolution of the Board, with such resolution. Installments of assessment may be levied and collected on a monthly, quarterly, semi-annual, or annual basis, as determined by resolution of the Board.

(c) The Board may require advance payment of assessments at closing of the transfer of title to a Unit.

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4.10 Capitalization of Association; Initial Fee. Upon acquisition of record title to a Unit by the Owner, a contribution of \$295.00 shall be made by or on behalf of the purchaser to the working capital of the Association. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expense incurred by the Association pursuant to the Governing Documents.

4.11 Effect of Non-Payment of Assessment; remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date therefore shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Directors shall determine appropriate) until paid. In addition, the Directors may assess a late fee for each delinquent installment that shall not exceed ten percent (10%) of the installment.

(a) **Remedies.** To enforce this Article, the Board may, in the name of the Association:

(i) bring an action at lawsuit against the Owner personally obligated to pay any such delinquent assessment without waiving Association's lien for the assessment;

(ii) foreclose the lien against the Unit in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law;

(iii) restrict, limit, or totally terminate any or all services performed by the Association on behalf of the delinquent Owner;

(iv) terminate, in accordance with section 57-8a-204 of the Community Association Act, Utah Code Ann. 57-8a-204, the Owners rights to receive utility services paid as a Common Expense and/or terminate the Owner's right of access and use of any recreational facilities;

(v) if the Owner is leasing or renting his Unit, the Board may, in accordance with section 57-8a-205 of the Community Association Act, Utah Code Ann. 57-8a-205, demand that the Owner's tenant pay to the Association all future lease payments due from the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid;

(vi) exercise any other rights authorized by the Community Association Act for non-payment of assessments and other charges;

(vii) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Unit remains unpaid; and/or

(viii) accelerate all assessment installments that will become due within the subsequent twelve (12) months so that all such assessments for that period become due and payable at once. This acceleration provision may only be invoked against an Owner who has been delinquent in paying any assessment or installment two (2) or more times with a twelve (12) month period.

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(b) **Attorney Fees and Costs.** There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred by the Association, together with, where applicable, an account for the reasonable rental for the Unit from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

(c) **Power of Sale.** A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the Unit of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for purposes of power of sale foreclosure.

4.12 Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein: (a) all property dedicated to and accepted by any local public authority; (b) all Common Area and Limited Common Area; and (c) any other property declared exempt as set forth in this Declaration or on the Plat.

4.13 Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage held by Mortgagee if the Mortgage was recorded prior to the date the assessment became due.

4.14 Termination of Lien. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relive a Unit or Owner from personal liability for assessments coming due after he takes title or form the lien of such later assessments.

4.15 Certificate Regarding Payment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on specified Unit has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

ARTICLE 5 INSURANCE

5.1 Casualty Insurance on Insurable Common Area.

(a) The Directors shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area

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shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses which shall be included in the regular annual assessments made by the Association.

(b) In addition to casualty insurance on the Common Area, the Directors may elect to obtain and continue in effect on behalf of all Owners, adequate blanket casualty and fire insurance in such forms as the Directors deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Units including structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other premiums paid by the Association shall be Common Expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Units shall be written in the name of, and the proceeds shall be payable to the Association as the trustee for the Owners.

(c) The Association policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements herein. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and opportunity to be heard, that the loss is the result of negligence or willful misconduct of one or more of Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner and Owner's Lot.

5.2 Replacement or Repair Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Unit Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Unit Owner. In the event that the Association is maintaining blanket casualty and fire insurance on the Units, the Association shall repair or replace the same to the extent of the insurance proceeds available. In the event of damage or destruction by fire or other casualty to any portion of the Property covered by insurance written in the name of the Association, the Directors are empowered to and shall represent the Members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each Owner for this purpose.

5.3 Liability Insurance. The Directors shall obtain a comprehensive policy of public liability insurance covering all of the Common Area for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

5.4 Fidelity Insurance. The Directors may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Directors shall seek a policy which shall (1) name the Association as obligee or beneficiary, (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the

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Association which may be on deposit at any time, and (3) contain waiver of any defense based on the exclusion of persons who serve without compensation from any definition of "employee".

5.5 Annual Review of Policies. The Directors shall review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed. The Board may, to the extent it deems necessary to more fully protect and insure the Association and its property, or to otherwise comply with the evolving laws and insurance standards, modify the coverage standards set forth in the Article 5 without the necessity of amending this Declaration.

ARTICLE 5 ARCHITECTURAL CONTROLS AND STANDARDS

6.1 Architectural Control Committee. There is hereby created an Architectural Control Committee (ACC) which shall be composed of a minimum of three (3) or more representatives appointed by the Board of Directors. If the Board of Directors does not establish or appoint the ACC the Board itself shall carry out the functions and responsibilities of the ACC. All members of the ACC shall be Member of the Association.

6.2 Architectural Control Committee Approval. The ACC's primary responsibility is to ensure that the exteriors of all Units, including the roofs, be maintained in the same color and texture as originally established by the Declarant and that no Unit Owner or other person attach, erect, install or place any thing on the exterior of Units or the interior of Units where the same might be visible from outside the Unit, or other buildings and structures in the Property without first obtaining ACC approval in accordance with this Article. In this regard, no structure, building, fence, wall, or thing shall be placed, erected, or installed upon any Lot or to any Unit and no improvements or other work (including exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Property until the plans and specifications showing, without limitation, the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the ACC in accordance with this Article and any rules and regulations adopted by the ACC pursuant to the authority of this Article. ACC approval shall be required regardless of whether the structure, building, fence, wall or thing to be constructed, placed, erected, or installed is new, or an addition, extension, or expansion, change or alteration, or re-construction, replacement, re-erection, or re-installation of any of the foregoing.

6.3 Rules, Regulations, Guidelines and Procedures. The ACC may establish rules, regulations, guidelines, and procedures to govern the submission, review, and approval of any plans submitted to it for review. Any rules, regulations, guidelines and procedures established by the ACC hereunder may be made available to any Member upon request by that Member.

6.4 Standards for Approval. In deciding whether to approve or disapprove plans and specifications submitted to it, the ACC shall use its best judgment to ensure that all improvements, construction, landscaping, and alteration on Lots and to any Unit within the Property conform to and harmonize with existing surroundings and structures. Any structure hereafter constructed on any Lot in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure; and if the plans and specifications therefore meet such criteria, the ACC must approve the same.

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6.5 Procedure for Approval. Any plans and specifications submitted to the ACC shall be approved or disapproved by it in writing within thirty (30) days after submission; provided however, that the plans and specifications for any replacement structure to be constructed in substantially the same size as its predecessor shall be approved or disapproved within ten (10) days after submission. In the event the ACC fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

6.6 Construction. Once commenced, any improvements, construction, landscaping, or alterations approved by the ACC shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity the activity provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required. Any construction, improvements, etc. may require approval and permitting from the City of Logan.

6.7 Non-Liability; Waiver; Indemnification. When the ACC undertakes its review of any plans it is not doing so for the purpose of ensuring the structural or mechanical integrity or soundness of approved construction or modifications; ensuring compliance with building codes and other governmental requirements; or ensuring that the proposed improvements are aesthetically pleasing or otherwise acceptable to any Owner, wherever situated within the Property. Accordingly, it shall bear no responsibility for ensuring any of the foregoing. The ACC, the Association, the Board, any members, predecessors, successors, assigns, parents, affiliates, subsidiaries, and the agents and employees of any of them shall not be held liable for, and each Unit Owner, for him or herself and his or her successors, heirs, and assigns, hereby agrees to hold the foregoing harmless for: any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents; or any injury, damages, or loss arising out of the manner or quality of other circumstances of approved construction on or modification to any structure.

6.8 Abandonment of Architectural Plan. Without the prior written approval of at least sixty-seven percent (67%) of all Members, neither the Association nor the ACC shall have the power, by act or omission, the change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of Units, and the maintenance of the Common Area and Limited Common Area, in any, including walls, fences, driveways, lawns and plantings.

ARTICLE 7 PARTY WALLS

7.1 General Rules of Law to Apply. Each wall that is built as a part of the original construction upon the Property which serves and/or separates any two adjoining Units shall constitute a party wall. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

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7.3 **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.4 **Exposure to Elements.** Notwithstanding any other provision of this Article, an Owner by negligent or willful actions cause a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

7.5 **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

7.6 **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one addition arbitrator within ten (10) days of their selection, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Directors shall select an arbitrator for the refusing party.

ARTICLE 8 **MAINTENANCE**

8.1 **Association's Responsibility.** The Association shall be responsible for maintenance of the Common Area. The cost of such maintenance shall be a Common Expense. This maintenance includes but is not limited to upkeep of all landscaping; upkeep and maintenance of all roadways, street lights, sidewalks, and parking areas; snow and ice removal from streets, parking areas, and sidewalks with constitute Common Area; and upkeep and maintenance of all buildings and facilities which constitute part of the Common Area. The Association shall not have any responsibility for upkeep and maintenance of the Units or any Limited Common Area unless expressly required by this Declaration or expressly assumed by the Association pursuant to the authority of this Declaration.

8.2 **Owner's Responsibility.** Each Owner shall be responsible for maintenance of his or her Unit and Limited Common Area designated for the exclusive use and occupancy of his or her Unit, in manner consistent with all applicable provisions of the Governing Documents. In the event of damage or destruction of any Unit, the Owner of the Lot on which such Unit is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Community. The Board shall have the right, in the event an Owner fails to perform maintenance which is the Owner's responsibility, and after ten (10) days written notice (which notice shall not be required in the event of emergency or threat to life, health, property, or safety), to perform exterior maintenance upon each Unit and the Limited Common Area adjacent and appurtenant thereto and shall charge the Unit Owner the costs of such maintenance as a specific assessment.

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8.3 Access at Reasonable Hours. For the sole purpose of performing the maintenance required or otherwise authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours.

8.4 Other Services Provided by Association. To the extent determined to be necessary or desirable by the Board, the Association may provide additional services to the Unit Owners as a Common Expense or specific assessment, as appropriate.

8.5 Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a Lot outside the walls of a Unit, and the Limited Common Areas adjacent and appurtenant to the Units may be altered by rule of the Association.

ARTICLE 9 CONDEMNATION; PARTITION

9.1 Condemnation. Wherever all or any part of the Common Area shall be taken (or conveyed by the Board in lieu of and under threat of condemnation) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Board and Members representing at least seventy-five percent (75%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Section 5.2 regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

(b) If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

9.2 No Partition. Except as otherwise permitted in the Declaration, the Common Area shall remain undivided and no person or entity shall bring any action or partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not be construed to prohibit the Board from acquiring and disposing of tile to real property which may or may not be subject to this Declaration.

ARTICLE 10 USE AND CONDUCT RESTRICTIONS AND REQUIREMENTS

The following use and other restrictions shall apply to the Community. These restrictions are in addition to those established by federal, state, or local law or ordinances and those which may be set forth elsewhere in the Governing Documents.

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10.1 General Use Restrictions. All of the Property which is subject to this Declaration is hereby restricted to residential dwellings and buildings in connection therewith, including but not limited to community buildings on the Common Area, if any. All buildings or structures erected on the Property shall be of new construction and not buildings or structures shall be removed from other locations to the Property. After the initial construction on a Lot, no subsequent building or structures dissimilar to that initial construction shall be built on that Lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garbage, barn or other outbuilding shall be placed or used on any lot at any time.

10.2 Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon any part of the Property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Unit Owners, or which shall in any way interfere with the quiet enjoyment of each of the Owners, or which shall in any way increase the rate of insurance.

10.3 Parking. No parking of vehicles of any kind on the streets or parking areas within the Community shall be permitted except as set forth in the rules and regulations adopted by the Board. Notwithstanding any rule and regulation adopted by the Board, recreational vehicles, boats, travel trailers and similar personal property are prohibited from being parked or stored with the Property.

10.4 Leases and Leasing.

(a) **Rental Cap.** In order to protect the value and desirability of the Community as a harmonious and attractive residential community and to avoid any deterioration of the same into a transient-apartment like community, leasing of Units is permissible provided however that at no time shall more than fifteen percent (15%) of the Units in the Property be leased (there are 57 Units within the Property, therefore only 9 may be leased at a time) unless an exception in writing is granted by the Board for good cause shown. Once the maximum number of Units has been leased, Owners shall only be allowed to lease their Units as openings become available under the maximum on a first come, first served basis as logged by the Board on the Association's waiting list. This subsection shall not apply to any leasing transaction entered into by a Mortgagee which becomes the owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage. This subsection shall apply to all subsequent purchasers therefrom.

(b) **Lease Requirements.** Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents and that any failure by a lessee/tenant to comply with the terms of such documents shall be a default under the lease. An Owner who enters into a lease or rental agreement must notify the Board of the same, in writing, within fifteen (15) days after the execution of the lease or rental agreement. The Association may require that Owners use lease forms approved by the Association but shall not impose any fee of the lease of any Unit greater than an amount reasonable based on the costs to the Association of administering that lease. The Association or Board may require a minimum lease term of not less than 12 months.

(c) **Enforcement Against Owners.** Notwithstanding any other rights of enforcement under this Declaration and other Governing Documents, or any applicable law, the Association may impose a fine, not to exceed fifty percent (50%) of the amount of the maximum annual assessment, on the Owner, which

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shall constitute a lien upon such Owner's Lot, for each violation by Owner's tenant/lessee/renter of this Declaration or other Governing Documents. F Such fine shall be imposed after a ten (10) day notice period is given to the Owner such violation. The Association may impose an additional fine on the Owner for each day such violation continues after the ten (10) day notice period provided herein, which additional fines shall constitute a lien upon such Owner's Lot. The Association need not provide any additional notice prior to fining an Owner for a continuing violation. There shall be added to any such fine reasonable attorney fees and costs incurred by the Association in enforcing this Article. Any fine levied pursuant to this Article shall be recoverable by the Association in the same manner as an assessment under article 4 and shall create a lien in favor of the Association against the Owner's Unit in the same manner as an assessment.

10.5 Timeshares Prohibited. No Unit Owner shall offer or sell any interest in his Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

10.6 Signs. The Board shall have the right to regulate the display, use, size and location of signs within the Property. The right to regulate includes the right of prohibition. Notwithstanding the Board's right of regulation, no signs, advertising signs, billboards, objects of unsightly appearance, or nuisance shall be erected, place, or permitted to remain on the exterior of any Unit, within or upon the Common area, or any portion of the Property. Nor shall such signs, billboards, objects of unsightly appearance, or nuisances be placed or permitted to remain within any Unit where the same are visible from the streets or roadways. The foregoing restrictions shall not apply to the activities of the Association in furtherance of its powers and purposes set forth in the Governing Documents, as the same may be amended from time to time.

10.7 Compliance with Laws. No Unit Owner shall permit anything to be done or kept in his Unit or any part of the Property that is in violation of any applicable federal, state or local law, ordinance or regulation.

10.8 Commercial Activity. No commercial activities of any kind whatever shall be conducted on any portion of the Property, including an in-home business as defined by local ordinances. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth in the Governing Documents, as the same may be amended from time to time or to any on-site property manager under contract to perform services for the Association.

10.9 Smoking. The Board is authorized to, by rule or resolution, prohibit tobacco smoking within or around the Common Areas and any other portion of the Property, including within Units or on patios, when it is determined that the smoke or the smell from the smoking might filter or drift into other Units or interfere with the use and enjoyment of the Property by other Unit Owners. In addition, the Board is authorized to enforce and otherwise bring an action for nuisance under the provisions of Title 78, Chapter 38 of the Utah Code for and behalf of any Unit Owner against any other Unit Owner or occupant whose smoking creates or constitutes a nuisance under said provision of the Utah Code.

10.10 Pets and Animals.

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(a) **Restrictions.** The Board has the right to regulate and restrict, by rule, the keeping and harboring of pets and animals within the Property, including the keeping and harboring of pets and animals within the Units. This right includes the right to restrict the type, breed, or species of animal, the number of animals which may be kept, the areas in which the animals may be kept or taken, and to completely eliminate the keeping and

harboring of pets. The Board may also establish procedural rules and regulations to implement its rules which should include provisions within the Property and may not be allowed or authorized by Association rule or resolution.

(b) **Owner Responsibility.** Unit Owners must take due care to ensure that their pets and animals do not make excessive noises, cause any offensive smell, or create any physical threat to the safety of any other Unit Owner or person within the Property, or the safety of any guests, lessees, or invitees, particularly among children. Unit Owners are responsible for any property damage, injury, or disturbance that their pet may cause or inflict anywhere within the Property. To the extent that Association is subjected or otherwise exposed to any liability, claims, damages costs, losses, or expenses as a result of the actions of an animal, the Association has the right to make a claim against the Unit Owner. Unit Owners shall indemnify the association from any claims, damages, or causes of action that arise from or otherwise relate to the conduct of their pets. This indemnification shall include any attorney fees, cost, and expense incurred by the Association. Unit Owners shall comply with all applicable laws and ordinances concerning the keeping of pets of animals.

10.11 Hazardous Activities and Substances. No Owner shall engage in or permit any of said Owner's guests, visitors, tenants, or invitees to engage in any activity that will cause an increase in insurance premiums for insurance coverage on the Property nor shall any Owner or any Owner's guests, invitees, visitors or tenants engage in any activity that will cause or permit any hazardous substance or material to be stored, used or disposed of on or within the Property.

10.12 External Apparatus. No Unit Owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, or be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Architectural Control Committee. Swamp Coolers are prohibited within the Community.

10.13 Exterior Television or Other Antennas. To the extent not prohibited by law, no television, radio, or other electronics antenna or device of any type shall be erected, constructed, affixed, placed or permitted to remain on the exterior of any Unit, on any Common Area, or the exterior of any building or structure upon the Property, or within any Unit where the same is visible from outside the Unit. The Board is hereby authorized to establish and promulgate rules and regulations to govern the placement and installation of antennas covered by the Federal Communications Commission's rules on "Over-the-Air Reception Devices," which requires such antennas to be screened from street level view.

10.14 Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. Garbage shall be placed in proper containers. Garbage containers shall be kept inside of the garages of Units.

10.15 Pest Control. Un Unit Owner or Unit occupant shall permit any thing or condition to exist within or upon the Unit which would induce, breed, or harbor insects, rodents or other pests. In addition to such pest control services as may be provided by the Association, each Unit Owner shall perform such pest control activities within and upon the Unit as may be necessary to prevent insects, rodents and other pests from being present in his Unit.

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10.16 Oil and Mining Operations. No oil drilling, oil development operations, oil reefing, quarrying or mining operations of any kind shall be permitted upon or in the Property. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Property.

10.17 Interior Utilities. All utilities, fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act or any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other Lots or Owners.

10.18 Skateboards and Rollerblades. Skateboarding and rollerblading are prohibited within the Property.

10.19 Coal or Wood Burning Fireplaces and Stoves. No Unit may contain or utilize any coal or wood-burning fireplace, stove, or other similar device; provided however, that fireplaces, stoves, or similar devices utilizing natural gas are permissible.

ARTICLE 11 MORTGAGEE PROTECTION

11.1 Title and Mortgagee Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

11.2 Preservation of Common Area. The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Community and were approved by the City of Logan, as set forth on the Plat. Unless the Association shall receive the prior written approval of (a) all first Mortgagees of Lots; (b) the Owners of all Lots; and (c) Logan City, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas, except to grant reasonable easements for utilities and similar or related purposes.

11.3 Notice of Matters Affecting Security. The Association shall give written notice to any Mortgagee of a Lot requesting such notice wherever: (a) there is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under the Governing Documents which is not cured with sixty (60) days after default occurs; (b) damage to the Common Areas from any one occurrence exceeds \$10,000.00; or (c) any condemnation or taking by eminent domain of any material portion of the Common Areas.

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11.4 **Notice of Meetings.** The Board shall give to any Mortgagee of Lot requesting the same, notice of all meetings of the Association; and such Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

11.5 **Right to Examine Association Records.** Any Mortgagee shall, upon request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Lot securing the Mortgage.

11.6 **Right to Pay Taxes and Charges.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies pertaining to the Common areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy; and Mortgagees making such payment shall be owed immediate reimbursement therefore from the Association.

11.7 **No Priority Accorded.** No provision of this Declaration gives or may give a Lot Owner or any other party priority over any rights or Mortgagees pursuant to their respective Mortgages in the case of distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Areas.

11.8 **Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision of clause of the Article 11, the provision or clause which results in the greatest protection and security of the Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

11.9 **Notice of Objection.** Unless a Mortgagee provides the Secretary of Association with written notice of its objection, if any, to any proposed amendment or action outlined in this Article or which otherwise requires approval of the Mortgagee with 30 days following the receipt of notice delivered by certified or registered mail, return receipt requested, of such proposed amendment, or action, the Mortgagee shall be deemed conclusively to have approved the proposed amendment or action.

ARTICLE 12 SAFETY AND SECURITY

Each Owner and occupant of a Unit, and their respective guest and invitees, shall be responsible for their own personal safety and security of their property with the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the level of safety or security which each person provides for himself and his property, such as contracting with a private security company or courtesy patrol. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety and security with the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all case prevent loss or provide detection or protection for which the system is designed

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or intended. Each Owner acknowledges, understands and shall be responsible for informing its tenants and other occupants of his Unit that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and loss or damage to property, including Units and their contents, resulting from the acts of others.

ARTICLE 13 EASEMENTS

13.1 Encroachments. Each Lot and the Property included in the Common and Limited Common Areas shall be subject to an easement for encroachments created by construction, setting and overhangs, as designed or constructed by the Declarant. In the event the structure containing Lots is partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments of parts of the adjacent Units or Common or Limited Common Areas due to construction shall be permitted and that a valid easement for said encroachment and maintenance thereof shall exist.

13.2 Utilities. There is designated on the Plat an easement upon, across, over and under the Property for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Property to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Property, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property in such a way as to unreasonably encroach upon or limit the use of the Common Area or Limited Common Area or any structure thereon. IN the initial exercise of easement rights under this Section, a utility shall make reasonable efforts to occupy and use the same physical location as it prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said Property without conflicting with the terms hereof. Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use s the Common and Limited Common Areas, and the right to connect to and use roadways and utilities owned or controlled by the Association or serving the Property. The Declarant reserves the right to execute agreement(s) which may confer on itself or adjacent landowners or Owners associations the right to use Common Area and Limited Common Area and common facilities, including (without limitation) recreational vehicles.

13.3 Police, Fire and Ambulance Service. An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common Area and Limited Common Area in the performance of their duties.

13.4 Maintenance by Association. An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or cross over the Common Area and Limited Common Area, if any, any Lot to perform the duties of maintenance and repair.

13.5 Drainage and Irrigation Easements. Declarant reserves for itself and its successors and assigns, and for the Association, and its officers, agents, employees, and successors and assigns, an easement to enter on, across, over, in and under any portion of the Property to improve for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Declarant also reserves the right to use or

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delegate the use of any irrigation ditches existing on the Property on the date this Declaration is recorded, and Declarant reserves for itself and its successor and assigns the right to construct, access and maintain additional irrigation ditches and lines on the Property for the maintenance of the Common Area and for such other purposes as Declarant may from time to time deem appropriate.

13.6 Owner's Easements of Enjoyment. Every Owner has a right and easement of use and enjoyment in and to the Common Area and Limited Common Area, if any, which is designated by the Declarant for the exclusive use of an Owner's Unit. This easement is appurtenant to and passes the title to every Lot, subject to the provisions of the Governing Documents. A Unit Owner has no easement of use of the air space outside of the boundaries of his Unit or, in the case of a patio or deck, outside the confines of the patio or deck as depicted on the Plat. Therefore, subject to the Board's right of regulation, each Unit Owner's easement of use with respect to an appurtenant patio or deck shall not extend (i) horizontally beyond or outside of the center line of any wall or other exterior surface constituting the perimeter boundary of the patio or deck or (ii) vertically beyond the interior surface of any covered area or ceiling over the patio/deck. In the event that a patio or deck is uncovered, the Unit Owner's easement of use of the airspace for such patio or deck shall not extend beyond the height of the interior surface of the ceiling within the Unit Owner's Unit.

13.7 Repair Easements. Each Lot shall be subject to an easement for access to make repairs upon adjoining Lots, Units, and structures; provided however, that: (a) any damage caused by such entry shall be repaired at the expense of the Owner whose property was the subject of the repair work which caused the same; (b) any such entry shall be made only at reasonable time and with as little inconvenience s possible to the Owner of the entered Lot; and (c) in no event shall said easement be deemed to permit the entry into the interior portion of any Unit.

13.8 Association's Right to Grant Easements. The Association, through the Board, shall have the right to grant such easements over and on the Common area for use by any property manager, management company, security or courtesy patrol, or other individuals or companies with whom the Board contracts to perform services for the Association.

13.9 Easements of Record. The easements provided for in this Article shall in no way affect any other recorded easement.

13.10 Limitations on Easements. In no event shall any easement granted or reserved herein be construed to or have the effect of permitting entry into the interior portion of any Unit.

ARTICLE 14 **AMENDMENT**

14.1 By the Members. Except as otherwise specifically provided herein, this Declaration may be amended, modified, extended or revoked, in whole or in part, by the affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of Owners representing at least sixty percent (60%) of the total votes in the Association. Notwithstanding the above, the percentage of votes necessary to amend a specific provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

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14.2 By the Board. The Board has the right to unilaterally amend this Declaration if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination.

14.3 Effective Date; Validity. Unless a later effective date is specified in the amendment, any amendment shall be immediately effective upon recording in the office of the Cache County Recorder a copy of such amendment accompanied by a verified certificate of the President or Secretary of the Association stating that the required number of votes or consents was obtained and that a record of such votes or originals of the consents will be placed on file in the Association's office. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

ARTICLE 15 **ENFORCEMENT**

15.1 Violations Deemed a Nuisance. Every violation of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration, any rule, regulation, or resolution, or by law or equity.

15.2 Legal Action Authorized. The Association, through the Board, the Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all the provisions of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration, including all charges and liens now or hereafter imposed pursuant to the authority of this Declaration, against any person, persons, or entities violating or attempting to violate any provision of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration, to restrain or abate or otherwise recover damages for the violation, and against the land Declarant and the Board shall have the right to grant variances and stay enforcement proceedings against any Owner on a case-by-case basis when they determine such action is in the best interests of the Association.

15.3 Fines and Penalties. The Board may levy a fine or penalty not to exceed, for each violation, fifty percent (50%) of the amount of the maximum annual assessment against any Owner who fails to refrain from violating this Declaration or any rule or regulation established pursuant to the authority of this Declaration. The Board may establish time frames and requirements for written notice, hearings, and cure periods for Owners in violation prior to levying such fine or penalty. Any fine or penalty levied by the Directors, which is not paid within fifteen days (such time period shall be stayed should the Governing Documents require any period to cure or for notice and hearing) shall be recoverable by the Association in the same manner as an assessment under Article 4, and shall create a lien in favor of the Association against the Owner's Unit in the same manner as an assessment.

15.4 Attorney Fees and Costs. Any fine or penalty levied against an Owner for any violation shall include any attorney fees and costs incurred by the Association with respect to such violation. The prevailing party in any action to enforce this Declaration or any rule or regulation established pursuant to the authority of this Declaration shall be entitled to an award of reasonable attorney fees and cost incurred in such action.

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15.5 Nonexclusive Remedies. All the remedies set forth in this Declaration are cumulative and not exclusive to any others provided elsewhere in the Governing Documents, the Community Association Act, or by other applicable laws and ordinances.

15.6 Non-Liability. The Board, officers, or Members of the Association shall not be liable to any Unit Owner, lessee, tenant, Member or other individual for a mistake in judgment, or for any negligence or non-feasance arising in connection with the performance or non-performance of duties under the Governing Documents or the Community Association Act.

15.7 Arbitration; Mediation. The Board may, by rule or resolution, establish procedures for mandatory meditation or arbitration to settle disputes between the Association and Unit Owners. Any such rule or resolution shall operate prospectively only.

ARTICLE 16 **GENERAL PROVISIONS**

16.1 Implied Rights; Board Authority. The Association may exercise any rights or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of membership except where applicable law or the Governing Documents specifically require a vote of membership.

16.2 Disclaimer of Liability. The Association shall not be liable for any failure of services to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage caused by the elements, any Unit Owner, or any other person resulting from electricity, water, snow, or ice which may leak or flow from or over any of the Property or from any pipe, drain, conduit, appliance, or equipment, or any secondary or consequential damages of any type. No discomfort arising from the making of repairs or improvements to the Property by the Association or from any action taken by the Association to comply with any law, ordinance, or with the order or directive of any governmental authority.

16.3 Dates and Times. In computing any period of time prescribed or allowed by the Governing Documents, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state or federal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a state or federal holiday. The deadline of the last day of the period so computed shall be 5:00 P.M., Mountain Time.

16.4 Interpretive Conflicts. In the event of any conflict between the provisions of any of the Governing Documents, the documents shall control in the following order of authority: (1) the Declaration; (2) the Articles; (3) the Bylaws, (4) any rule, regulation or resolution passed pursuant to the authority of the foregoing documents.

16.5 Severability. All of the terms and provisions of this Declaration shall be construed together, but if any one of said terms and provisions, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other terms and provisions, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and Owners, their successors, heirs and assigns shall be bound by each term and provision of this Declaration, irrespective of the invalidity or enforceability of any other term or provision.

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16.6 **Duration.** The covenants, conditions, restriction, and easements of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

16.7 **Notices.** Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the US Mail, postage prepaid, to the last know address of the person who is entitle to receive it. The Board may, by resolution, adopt a policy for notification via electronic communication or transmission (such as email) to Unit Owners in lieu of notice by mail. In addition, the Board may require that Unit Owners maintain a current email address with the Board for such purpose. Any notice to the Association shall be sent to the Address designated by the Board to receive notices, or, if no such address is designated, to the president of the Association.

16.8 **Gender and Grammar.** The singular, whenever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply to either corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

16.9 **Waivers.** No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

16.10 **Topical Headings.** The topical headings contained in any article, section, or subsection of this Declaration are for convenience only and do not define, limit, or construe the contents of this Declaration or any provision hereof.

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IN WITNESS WHEREOF, Declarant has duly executed this Declaration the day and year first below written.

Dated this 21ST day of May, 2008

RIVER CROSSING TOWN HOMES OWNERS ASSOCIATION

BY: [Signature] DATE: 5-21-08

*Subscribed and sworn to before me
this 21st day of May, 2008.*

Lois Price, Notary

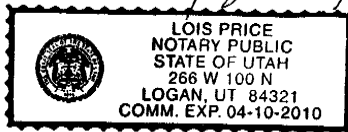


EXHIBIT A

**DECLARATION OF
EASEMENTS, COVENANTS, CONDITIONS & RESTRICTIONS
FOR THE
RIVER CROSSING TOWN HOMES**

Located in Logan, Cache County, Utah with legal descriptions as follows:

- UNIT 1, RIVER CROSSING PUD.
- UNIT 2, RIVER CROSSING PUD.
- UNIT 3, RIVER CROSSING PUD.
- UNIT 4, RIVER CROSSING PUD.
- UNIT 5, RIVER CROSSING PUD.
- UNIT 6, RIVER CROSSING PUD.
- UNIT 7, RIVER CROSSING PUD.
- UNIT 8, RIVER CROSSING PUD.
- UNIT 9, RIVER CROSSING PUD.
- UNIT 10, RIVER CROSSING PUD.
- UNIT 11, RIVER CROSSING PUD.
- UNIT 12, RIVER CROSSING PUD.
- UNIT 13, RIVER CROSSING PUD.
- UNIT 14, RIVER CROSSING PUD.
- UNIT 15, RIVER CROSSING PUD.
- UNIT 16, RIVER CROSSING PUD.
- UNIT 17, RIVER CROSSING PUD.
- UNIT 18, RIVER CROSSING PUD.
- UNIT 19, RIVER CROSSING PUD.
- UNIT 20, RIVER CROSSING PUD.
- UNIT 21, RIVER CROSSING PUD.
- UNIT 22, RIVER CROSSING PUD.
- UNIT 23, RIVER CROSSING PUD.
- UNIT 24, RIVER CROSSING PUD.
- UNIT 25, RIVER CROSSING PUD.
- UNIT 26, RIVER CROSSING PUD.
- UNIT 27, RIVER CROSSING PUD.
- UNIT 28, RIVER CROSSING PUD.
- UNIT 29, RIVER CROSSING PUD.
- UNIT 30, RIVER CROSSING PUD.

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UNIT 31, RIVER CROSSING PUD.
UNIT 32, RIVER CROSSING PUD.
UNIT 33, RIVER CROSSING PUD.
UNIT 33, RIVER CROSSING PUD.
UNIT 34, RIVER CROSSING PUD.
UNIT 35, RIVER CROSSING PUD.
UNIT 36, RIVER CROSSING PUD.
UNIT 37, RIVER CROSSING PUD.
UNIT 38, RIVER CROSSING PUD.
UNIT 39, RIVER CROSSING PUD.
UNIT 40, RIVER CROSSING PUD.
UNIT 41, RIVER CROSSING PUD.
UNIT 42, RIVER CROSSING PUD.
UNIT 43, RIVER CROSSING PUD.
UNIT 44, RIVER CROSSING PUD.
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UNIT 46, RIVER CROSSING PUD.
UNIT 47, RIVER CROSSING PUD.
UNIT 48, RIVER CROSSING PUD.
UNIT 49, RIVER CROSSING PUD.
UNIT 50, RIVER CROSSING PUD.
UNIT 51, RIVER CROSSING PUD.
UNIT 52, RIVER CROSSING PUD.
UNIT 53, RIVER CROSSING PUD.
UNIT 54, RIVER CROSSING PUD.
UNIT 55, RIVER CROSSING PUD.
UNIT 56, RIVER CROSSING PUD.
UNIT 57, RIVER CROSSING PUD.
UNIT 58, RIVER CROSSING PUD.

COMMON AREA, RIVER CROSSING PUD.

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