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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
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DECLARATION OF CONDOMINIUM

AND

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

TIMPANOGOS HEIGHTS CONDOMINIUMS

A RESIDENTIAL CONDOMINIUM PROJECT

IN

UTAH COUNTY, UTAH

TIMPANOGOS HEIGHTS
 CONDOMINIUM PROJECT
 DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS
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DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR TIMPANOGOS HEIGHTS CONDOMINIUM PROJECT

THIS Declaration of Covenants, Conditions, and Restrictions is made and executed this 14th day of May, 2002, by Bach Builders, Incorporated, a Utah Corporation of 2785 West 9000 South, West Jordan, Utah 84088 (hereinafter referred to as the "Declarant").

RECITALS:

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- A. THIS Declaration of covenants, Conditions and Restrictions affects that certain real property located in Utah County, Utah described with particularity in Article II below (hereinafter referred to as the "Property").
- B. Declarant is the owner of the Property.
- C. Declarant has constructed, is in the process of constructing or will construct upon the Property a residential condominium project which shall include individual Units, Common Area, and other improvements. All of such construction has been, or is to be, performed in accordance with the plans contained in the Record of Survey Map to be recorded concurrently herewith.
- D. Declarant intends to sell to various purchasers the fee title to the individual Units contained in the Property, and a corresponding membership interest in the Association of Unit Owners (which shall own the Common Area), subject to the Record of Survey Map, and the covenants, conditions and restrictions set forth herein.
- E. It is intended that this Project will be completed in one phase; however, the Declarant reserves the right to complete the project in two phases as a part of one Project consisting of all phases which may be completed from time to time, based on market conditions.
- F. Declarant desires, by filing this Declaration and Record of Survey Map, to submit the Property and all improvements now or hereafter construct thereon to the terms, covenants and conditions of this Declaration, and the Project is to be known as "Timpanogos Heights Condominiums".

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions, and restrictions set forth below, Declarant hereby makes the following Declaration:

I. DEFINITIONS:

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

- 1. **Additional Charges** shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, service fees, filing and recording fees, accruing interest, fines, penalties, and expenditures actually incurred or assessed by the Association.
- 2. **Articles of Organization** shall mean and refer to the Articles of Organization of the Timpanogos Heights Condominiums Homeowners Association on file or to be filed with the Utah Department of Commerce.
- 3. **Association** shall mean and refer to the Timpanogos Heights Condominium Association, Unit owners Non-Profit Corporation, a mandatory association of all of the Unit Owners in the Association, responsible for the preservation and maintenance of the property and the enforcement of the Declaration and the By-Laws.
- 4. **Board** shall mean and refer to the Committee of Timpanogos Heights Condominiums as duly constituted.
- 5. **Building** shall mean and refer to any of the structures constructed in the Project.

6. **By Laws** shall mean and refer to the By Laws governing the administration of the Project, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit "C."
7. **Capital Improvement** shall mean and refer to all non-recurring expenses (as opposed to day-to-day expenses) to repair, maintain or replace significant fixed assets in the Project (e.g. the entryways and exits to and from the project, private roads, sidewalks, exterior lighting, sport court, playground, R.V. Unit, picnic areas,) intended to restore, enhance, improve or ameliorate the utility, value or beauty of the Common Areas or Facilities.
8. **Class B Control Period** shall mean and refer to the period of time during which the Class B Member is entitled to appoint all or a majority of the members of the Committee.
9. **Common Areas** shall mean and refer to all real property in the Project in which the Association owns an interest for the common use and benefit of its Members, their successors, assigns, tenants, families, guests and invitees, including but not limited to the following item.

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- a. The real property and interests in real property submitted hereby, including the entirety of the Property and all improvements constructed thereon, excluding the individual Units.
 - b. All Common Areas and Facilities designated as such in the Survey Map of Maps;
 - c. All Limited Common Areas designated as such in the Survey Map or Maps;
 - d. All utility installations and all equipment connected with or in any way related to the furnishings of utilities to the Project and intended for the common use of all Unit Owners, such as telephone, electricity, gas, water, and sewer;
 - e. The Project's outdoor grounds, sport court, lighting, perimeter fences, landscaping, sidewalks, open parking spaces, RV Unit, and roadways, playground area, and picnic areas.
 - f. All portions of the Project not specifically included within the individual Units; and
 - g. All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation, or management of the Property owned by the Association for the common benefit of its Members.
 - h. All other Common Areas as defined by statute (Utah Code Ann. 57-8-3 et seq.)
10. **Common Area Fees** shall mean and refer the amounts assessed by the Committee to pay for all the common expenses incurred in the operation, maintenance, and regulation of the Project.
 11. **Community** shall mean and refer to the Timpanogos Heights Condominium Project.
 12. **Community Wide Standard** shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community and other similarity situated first class subdivisions in the county, as determined by the Management Committee from time to time.
 13. **Declaration** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Timpanogos Heights Condominium Project.
 14. **Eligible Insurer** shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed that has requested notice in writing of certain matters from the Association in accordance with this Declaration.
 15. **Eligible Mortgagee** shall mean and refer to a mortgage, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.
 16. **Eligible Votes** shall mean and refer to those votes available to be cast on any issue before the Association or the Committee. A vote, which is for any reason suspended, is not an "eligible vote."
 17. **Family** shall mean and refer to a group of natural persons residing in the same residential structure and maintaining a common household.

18. **Guest** shall mean and refer to an invitee, temporary visitor, any person whose presence within the Project is approved by or is at the request of a particular resident, including but not limited to lessees, tenants and the family employees, licensees or invitees of Owners, tenants, or lessees.
19. **Improvement** shall mean and refer to all existing physical structures and appurtenances to the Property of every kind and type, including but not limited to all buildings, dwelling units, fixtures, walkways, plumbing, electrical, heating, air conditioning, and utility systems, roads, walkways, driveways, parking areas, fences, walls, stairs, landscaping, green space, trees, shrubs, bushes, RV Unit, playground area, picnic area, recreational facilities and amenities.
20. **Land** shall mean and refer to all of the real property subject to this Declaration.
21. **Limited Common Area** shall mean any common area designated as reserved for use by the owner of a certain Unit of Units to the exclusion of the other owner in the project. Certain parking areas that are identified limited common areas are permanently assigned to specific Units, as an appurtenance to such Units, for the exclusive Units.
22. **Majority** shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty percent (50%) of the total eligible number.
23. **Management Committee** shall mean and refer to the committee of Owners elected to manage and operate and regulate the Association. ENT 55573:2002 PG 7 of 60
24. **Manager** shall mean and refer to the person of entity appointed or hired to manage and operate the Project.
25. **Map** shall mean and refer to the Record of Survey Map on file in the office of the County Recorder of Utah County.
26. **Member** shall mean and refer to an Owner. Each Owner is obligated, by virtue of his Ownership, to be a member of the Association.
27. **Mortgage** shall mean and refer to both a first mortgage and first deed of trust on any Unit, but shall not mean or refer to an executory contract of sale.
28. **Mortgagee** shall mean and refer to a mortgage under a first mortgage or a beneficiary under a first deed of trust on any Unit, but shall not mean or refer to a seller under an executory contract of sale.
29. **Notice and Hearing** shall mean and refer to the procedure which gives an Owner notice of an alleged violation of the Declaration, By Laws, or administrative Rules and Regulations adopted by the Committee from time to time; and the right to a hearing before the Board or its designated agent.
30. **Permanent Resident** shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for more than eight (8) weeks in any calendar year.
31. **Person** shall mean and refer to a natural person, corporation, partnership, trust, limited liability Company, or other legal entity.
32. **Phase** shall mean and refer to a particular stage or area of development within the Project designated by the Developer.
33. **Project** shall mean and refer to the Timpanogos Heights Condominiums.
34. **Property** shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to this Declaration.
35. **Record of Survey Map** shall mean and refer to the "Record of Survey Map or Maps of the Timpanogos Heights Condominiums on file in the office of the County Recorder of Utah County, as amended.
36. **Recreational, Oversized or Commercial Vehicle** shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other water craft, boat trailer, or any other recreational or commercial transportation device of any kind.
37. **Single Family Residence** shall mean and refer to both the architectural style of a dwelling unit and the nature of the residential use permitted.

38. **Size** shall mean and refer to the square footage of a Unit, rounded to the nearest whole number ending in zero. Size shall be computed and determined on the basis of dimensions shown on the Survey Map or Maps. So long as the measurement substantially complies with the provisions of this section and is not arbitrary, the Association's determination of size shall be conclusive.
39. **Survey Map** shall mean and refer to the Record of Survey Map on file in the office of the County Recorder of Utah County.
40. **Unit** shall mean and refer to a portion of the Property, other than the Common Area, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Record of Survey Map filed with this Declaration or amendments thereto. Where the contract indicates or requires, the term Unit includes any dwelling unit, physical structure, or improvement constructed on the Unit.
41. **Unit Numbers** shall mean and refer to the number, letter, or combination thereof designating a particular unit.
42. **Unit Owner** shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Utah County Utah) of a fee or an undivided fee interest in a Unit, including but not limited to both the seller and buyer under an executory sales contract (e.g. uniform real estate, land sales contract, or other similar instrument). The term Unit Owner does not mean or include a mortgage or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement of proceeding in lieu thereof.

II. SUBMISSION:

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The Land described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, is located in Utah County, Utah, and is hereby submitted to the terms, covenants, and conditions of this Declaration.

The Land is hereby made subject to, and shall be governed and regulated by this Declaration of restrictive covenants.

The Land is SUBJECT TO the described easements and rights of way.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above described Property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Maps or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above described Property; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cable, wires, utility systems, and similar facilities.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS:

The forgoing submission is made upon and under the following covenants, conditions, and restrictions:

1. **Description of Improvements:** The significant improvements included in the Project, which are now or will be located upon the Property, are generally described as Units, Common Area and

Limited Common Area. The total Project will be comprised of six phases with each phase consisting of six to eight units. Phase I will comprise units 27-33; Phase II will comprise units 23-26 and 34-37; Phase III will comprise units 15-22; Phase IV will comprise units 11-14 and 38-41; Phase V will comprise units 7-10 and units 42-45; and Phase VI will comprise units 1-6. The identification of the units contained in each phase is shown on the Survey Map. If all of the phases are added to the condominium project then the maximum number of units in the project will be 45 units and each owner will have 1/45th undivided interest in the Common Area. Each Phase shall be required to have 51% of the units under contract prior to allowing occupancy of the units in that phase.

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The Declarant shall construct certain 3-plexes and 4-plexes, comprised of 2 and 3 bedroom dwelling units with a wood frame, vinyl siding, and brick exteriors, and asphalt shingles on the roof. The Common Areas will include certain open parking areas, one (1) covered parking area per unit, basketball court, playground area, picnic area, all landscaped areas excluding the fenced in areas attached to each Unit, two (2) entrances and two (2) exits from the property, all roadways, dumpsters, parking, excluding RV parking. The Limited Common Area will include RV Parking. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Survey Map.

2. **Description and Legal Status of the Property:** The Units shall be individually owned and the Association shall own the Common Areas.
3. **Membership in the Association:** Membership in the Association is appurtenant to the ownership of a Unit, and may not be partitioned therefrom.
4. **Conveyancing:** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Unit shall describe the interest or estate involved substantially as follows:

All of UNIT No. _____ contained within the Timpanogos Heights Condominiums as the same is identified in the Record of Survey Map recorded in Utah County, Utah as Entry No. _____, in Book _____, at Page (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions, and Restrictions of the _____, recorded in Utah County, Utah as Entry No. _____, in Book _____, at Page _____, (as said Declaration may have heretofore been amended or supplemented), together with an undivided percentage of ownership interest in the Association.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the membership in the Association, nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

5. **Ownership and Use:** Each Owner, of whatever kind, shall be entitled to the exclusive ownership and possession of his or her Unit and to membership in the Association as set forth herein and subject to the following:
 - a. **Nature of Restrictions on Ownership and Use in General:** Each Owner shall have and enjoy the privileges of fee simple ownership of his or her Unit. There shall be no requirements concerning who may own a Unit, it being intended that they may and shall be owned as any other property rights by persons. This is a residential community and as such the Units shall be used only for residential purposes, except as set forth below. The

Common Areas shall only be used in a manner consistent with the residential nature of the Project.

- b. **Title to the Common Area:** The Common Area, described with particularity on Exhibit "D" attached hereto and incorporated herein by this reference, shall be owned by the Association.
- c. **Mandatory Association:** Each purchaser of a Unit shall automatically become a member of the Association. ENT 55573:2002 PG 10 of 60
- d. **Member's Easements and Rights of Way:** Every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following restrictions:
- (1) The right of the Association to limit the number of guests, and to adopt administrative rules and regulations from time to time governing the use and enjoyment of the Common Area;
 - (2) The right of the Association to suspend the voting rights and the privileges to use the amenities by a member for: (a) any period during which his or her Common Area Fee remains delinquent, and (b) a period not to exceed thirty (30) days after notice and hearing as may be set forth hereinafter for any infraction of the Association rules;
 - (3) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes. During the Developer's period of development of the Project, any such dedication or transfer shall be effective only if approved in writing by the Declarant; and
 1. The right of the Association to charge a reasonable admission or other fee for the use of any recreational facility situated upon the Common Area.
- e. **Rules and Regulations:** The Association, acting through its Committee, shall have the power and authority to adopt administrative rules and regulations and, in its sole discretion, to impose reasonable user fees for the amenities. Such rules, regulations, and use restrictions shall be binding upon all Owners and occupants, their guests and invitees as contained in Exhibit "E".
- f. **Restrictions and Limitations of Use:** The use of the Units, of whatever kind, is subject to the following guidelines, limitations, and restrictions:
- (1) **Parties Bound:** All Provisions of the Declaration, By-Laws, Rules, and Regulations shall be binding upon all Owners and residents, their families, guests and invitees.
 - (2) **Nuisance:** It shall be the responsibility of each Owner and Occupant to prevent the creation or maintenance of a nuisance in, on, or about the Project. This includes but is not limited to the following:
 - a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in, or about his or her Unit or the Common Areas;
 - b. The storage of any item, property, or thing that will cause any Unit or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
 - c. The storage of any substance, thing or material upon any Unit or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project.
 - d. The creation or maintenance of any noxious or offensive condition or activity in or about any Unit or the Common Areas;

- e. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;
 - f. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests, or invitees;
 - g. Too much noise in, on, or about any Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.
 - h. Too much traffic in, on, or about any Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.
- (3) **Unsightly Work, Hobbies, or Unkempt Condition:** The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions shall not be pursued or undertaken on any part of the Project.
- (4) **Removing Garbage, Dust & Debris:** All rubbish, trash, refuse, waste, dust, debris, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. ENT 55573:2002 PG 11 of 60
- (5) **Subdivision of a Unit:** No Unit shall be subdivided or partitioned.
- (6) **Firearms, Incendiary Devices, and Graffiti:** The use of firearms and incendiary devices, or the painting of graffiti, within the Project is prohibited. The terms firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.
- (7) **Temporary Structures:** No Owner or Occupant shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Board.
- (8) **Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections:** All property located at or near driveways, entrances, exits, walkways, paths, and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree, or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on, or about the Common Areas without the prior written consent of the Board. The Committee may alter or remove any objects planted or placed in violation of this subsection.
- (9) **Energy Conservation Equipment:** No solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project without the prior written consent of the board.
- (10) **Business Use:** No commercial trade or business may be conducted in or from any Unit unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board. Provided, however:
- a. The terms business and trade, as used in this subsection, shall be construed

to have their ordinary generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis, which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore.

- b. Notwithstanding the above, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-section.
- (11) **Storage and Parking of Vehicles:** The driving, parking, standing and storing of motor vehicles in, on, or about the Project shall be subject to the following:
- a. The rules and regulations adopted by the Committee from time to time:
 - b. No recreational, commercial or oversized vehicle parking is allowed in the Project;
 - c. No overnight parking on the street is allowed in the Project
 - d. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed (except for purposes of loading or unloading), in such a manner so as to create an obstacle or potentially dangerous situation, or along any street or road, or in front of any carport, walkway, driveway, Building or Unit, or in an unauthorized Common Area.
 - e. Visitors or guests shall park their motor vehicles in Common Areas designated for "guest" or "visitor" parking.
 - f. No resident shall repair or restore any vehicle of any kind in, on or about any Unit or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.
 - g. No carport may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is more or less than the number of motor vehicles that could have been reasonably parked in the carport as originally designed and constructed.
 - h. All parking areas shall be used solely for the parking and storage of motor vehicles used for personal transportation.
 - i. Vehicles parked in violation of this Declaration or parking Rules and Regulations adopted by the Board may be impounded, towed, and stored without further notice, and at the Owner's sole expense. The Association, Board and members of the Board shall be indemnified and held harmless from any loss, damage or claim caused by or arising out of the impounding, towing or storing of a motor vehicle pursuant hereto.
- (12) **Aerials, Antennas, and Satellite Systems:** No aerials, antennas, satellite dishes, or satellite systems (hereinafter referred to collectively as "Satellite Dish") shall be erected, maintained or used in, on, or about any Unit, the Common Areas, outdoors and above ground, whether attached to a building, structure, the exterior of a Unit or otherwise, within the Project without the prior written consent of the Committee.
- (13) **Windows and Window Coverings:** No aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any residential structure on a Unit. Sunshades and tinted windows are allowed; and all windows and windowpanes in the Project shall be

harmonious, and comparable in size, design, and quality so as not to detract from uniformity in appearance.

- (14) **Pets:** Up to two (2) domestic pets per Unit are allowed, provided the resident abide by the pet Rules and Regulations found in Exhibit "E" as adopted by the Board. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Project. Pets, which constitute a nuisance, will not be tolerated in the Community. Owners and occupants shall clean up after their pets in the Common Area and pets in the Common Area shall be kept on a leash at all times. The Committee reserves the right to have pets, which constitute a nuisance and or danger to the community, removed from the property. All violations are subject to a fine or assessment determined by the Committee.
- (15) **Insurance:** Nothing shall be done or kept in, on, or about any Unit, in the Common Area or Limited Common Area which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Project over what the Committee, but for such activity, would pay.
- (16) **Laws:** Nothing shall be done or kept in, on, or about any Unit or Common Area, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, and permit or other validly imposed requirement of any governmental body. ENT 55573:2002 PG 13 of 60
- (17) **Damage or Waste:** No damage to, or waste of, the Common Area or Limited Common Area or shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.
- (18) **Structural Alterations:** Except in the case of an emergency repair, no structural alterations, plumbing, electrical or similar work within the Common Areas or Limited Common Areas shall be done or permitted by any Owner without the prior written consent of the Committee.

6. **Leases:** In order to assure a community of congenial Owners and, thus, to protect the value of the property, the lease of a Unit by any Owner (other than as herein provided for certain mortgagees) shall be subject to the following provisions: **Lessor** shall pay to the Association all monthly Common Area Fees, special assessments, and specific assessments, as lawfully determined and made payable during and prior to the term of this Agreement and any other period of occupancy by Lessee.

- a. **Notice of Lease or Intent to Lease:** The Management Committee may require any Owner who has leased his or her Unit or who intends to lease his or her Unit to give notice in writing to the Management Committee of such intention, stating: (i) the name and address of the current Lessee or the intended Lessee, (ii) the terms of the proposed transaction, (iii) such other information as the committee may reasonably require credit check, criminal background check, and or employment and income verification (vi) Lessor agrees to use the lease agreement approved by the Committee and provide the Board with a copy of the signed of proposed lease.
- b. **Rules and Regulations:** The Committee shall have authority to make and to enforce reasonable rules and regulations in order to enforce this section, including the right to impose fines for failure to comply, which may be collected by lien and foreclosure.
- c. **Restrictions:** Each lease shall be deemed to be subject to the following restrictions:

(1) **Subject to Declaration:** All Leases and Lessees shall be subject to the provisions of the Declaration, By Laws, Rules, and Regulations.

(2) **Copies of Documents:** Each Owner leasing his or her Unit must make available to the Lessee, upon request, copies of the Declaration, By Laws, Rules, and Regulations.

(3) **Mandatory Language:** Any Lease affecting a Unit, whether written or oral, shall be deemed to contain the following provisions, whether or not expressly therein stated.

Each Owner and each Lessee, by virtue of taking occupancy of the Unit, covenants and agrees that any Lease of a Unit at this Project shall be deemed to contain the following language, and further agrees that if such language is not expressly contained therein, then, such language shall be incorporated into the Lease by this reference. Any Lessee, by occupancy of a Unit, agrees to be subject to and bound by the following:

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a. Lessor acknowledges that lessee will assume all promises made in behalf of the Lessor and will be responsible for lessee performance.

Therefore, the Association may bring an action against Lessor and lessee in law or equity to recover damages or to obtain injunctive relief. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

b. Lessee shall comply strictly with all provisions of the Act, Declaration, By Laws, and with the administrative rules and regulations adopted pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct and behavior of his or her family, their guests and invitees;

c. Owner and or Lessor must maintain hazard Insurance and acquire liability insurance for their unit; and add the lessee's as additional insured.

d. Lessee's rights shall be subject to all rights of the Association and any bona fide mortgage or deed of trust given to secure debt which is now or may be hereafter be placed upon the Unit by Lessor.

(4) **Recovery of Attorney's Fees:** The Committee may recover from the Owner and the Lessee all costs incurred in enforcing this Section, regardless of whether suit is filed, including reasonable attorneys fees.

(5) **Lessee's Rights:** Any Lessee charged with a violation of the Declaration, By Laws, or Administrative Rules and Regulations is entitled to the same rights to which an Owner would be entitled.

(6) **First Mortgagee's or Lender's Rights:** In the event of foreclosure the Homeowners Association shall be in first position as a lien holder for repayment of delinquent association fees. However the provisions of this section shall not apply to impair the rights of any Mortgagee to:

a. Foreclosure or take title to a Unit pursuant to remedies contained in any Mortgage;

- b. Take a deed or assignment in lieu of foreclosure; or
- c. Sell, leases, or otherwise dispose of a Unit acquired by the Mortgagee.

7. **Easement-Support, Maintenance and Repair:** There is hereby RESERVED and the Association is hereby GRANTED a non-exclusive easement over, across, through, above and under the Units and the Common Area for the operation, maintenance and regulation of the Common Area, amenities and facilities.

8. **Liability of Owners and Occupants for Damages:** Any Owner or Occupant shall be liable to the Association or other Owners or Occupants for damages to person or property in the Community caused by his or her negligence.

9. **Encroachments:** In the event that any portion of the Common Area, Limited Common Area or a Unit encroaches or comes to encroach upon other Common Area, Limited Common Area or a Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

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10. **Committee:** The Association shall be managed by a Management Committee which shall be comprised of Three (3) members. At the first Annual Homeowners Meeting, three (3) of the Members shall be elected for two (2) year terms and one (2) Member shall be elected for a one (1) year term; and thereafter, all Members shall be elected for two (2) year terms. This staggering feature will provide continuity to the management of the Association.

- a. **Qualify:** To qualify, a member of the Committee must be an individual Owner, or the legal representative of an organizational Owner.
- b. **Vacancies:** Any vacant seat on the Committee shall be filled with a member elected or appointed to serve a two (2) year term.
- c. **Dismissal:** Any Committee member who fails on three (3) successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Committee meetings (whether regular or special) held during any twelve (12) month-period shall automatically forfeit his or her seat. In such cases, the remaining Committee Members shall elect a replacement to sit on the Committee until the next meeting of the Association.
- d. **Removal of Committee Member/Declarant's Rights:** Except for Committee Members appointed by the Declarant during the Class B Control Period, Committee Members may be removed at any time by the affirmative vote of a majority of the members of the Association. A replacement to serve the remainder of the removed member's unexpired term shall be elected at the same meeting. Until the end of the Class B Control Period the Declarant shall appoint all members of the Committee, or their replacements.
- e. **Term:** Unless he or she forfeits or otherwise loses his or her seat herein provided, a member shall serve on the Committee until his or her successor qualifies and is properly elected by the Association.
- f. **No Compensation:** Committee members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Committee business and approved by the Committee.

11. **Committee Officers:** The Committee shall perform its functions through those members who are elected as officers by the Committee and through such employees as the Committee may

appoint. Any Committee officer, agent, or employee may at any time be removed, with or without cause, by the vote of a majority of the Committee members. Provided, however, if a member of the Committee is removed, as an officer, he, or she shall continue to be a member of the Committee. One person may hold more than one office except that of President and Secretary. The officers of the Committee, and their respective powers and functions, shall be as follows:

- a. **President:** The President shall be the chief executive of the Committee and shall exercise general supervision over the property and affairs of the Project. The President shall preside over all meetings of both the Committee and the Association. The President shall execute all instruments on behalf of the Committee, unless he or she chooses to delegate that authority to another Committee member.
- b. **Vice-President:** The Vice-President shall have all the powers of the President in the event of the latter's absence or inability to act.
- c. **Secretary:** The Secretary shall keep minutes of meetings of the Committee and the Association. The Secretary shall keep all records, which are required or made necessary by the Act, this Declaration, or the Committee.
- d. **Treasurer:** The Treasurer shall have custody and control of the funds available to the Committee. The Treasurer shall cause to be prepared an annual financial statement for each fiscal year of Project operation. The same Committee Member may hold the offices of Secretary and Treasurer.

12. **Committee Meetings:** A regular meeting shall be held at periodic intervals at such time and place as the Committee may determine. No notice need be given of regular Committee meetings. Special Committee meetings shall be held whenever called by the President or by any two (2) members of the Committee. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Committee member at least Seventy-Two (72) hours before the time fixed for the meeting. The propriety of holding any meeting, which is attended by all Committee members, may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Committee meeting shall consist of a majority of all the members then in office.

13. **Status and General Authority of Committee:** Any instrument executed by the Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who is good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (k) below, constitute a legal entity capable of dealing in its Committee name. The Committee shall have, and is hereby granted, the following authority and powers:

- a. **To Enter:** The power and authority to enter into or upon any Unit to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the residents.
- b. **Grant Easements:** The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Area for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

- c. **Execute Documents:** The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Record of Survey Map which has been approved by the vote or consent necessary to authorize such amendment.
- d. **Standing:** The power to sue and be sued.
- e. **Enter Into Contract:** The authority to enter into contract which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.
- f. **Transfer Interests in Real Property:** The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the members in the Association.
- g. **To Purchase:** The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the members in the Association.
- h. **To Add Property:** The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least seventy-five percent (75%) of the members in the Association.
- i. **Promulgate Rules:** The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration.
- j. **Meetings:** The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Members of the Association or residents not on the Committee, to retire to executive session, to regulate record keeping, and to allow, control of prohibit the electronic reproduction (video or audio) of Committee meetings.
- k. **All Other Acts:** The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Committee to perform its function on behalf of the Owners.

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14. **Professional Management:** Unless approval for self-management is obtained from at least ninety percent (90%) of the Members of the Association, the Committee shall delegate and carry out through a professional manager those of its functions which may be delegated. The professional manager so engaged shall be an independent contract and not an employee. The nature, scope and extent of his or her agency and duties shall be set forth in a written management contract. The Manager shall be responsible for operating and managing the Project for the benefit of the Committee and the Owners, and shall, to the extent permitted by law and by the terms of the Management Agreement with the Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Committee itself. All management contract shall be in writing, shall not be for a term in excess of one (1) year, and shall provide that either party, with or without cause and without payment of any termination fee or being subject to any penalty, may elect to terminate the contract upon at least sixty (60) days prior written notice to the other party thereto. Anything to the contrary notwithstanding, the Association or Committee may employ maintenance and clerical personnel as necessary to properly operate, maintain, and regulate the Project. The Manager shall be required to attend all Committee and Association meetings.

15. **Owners Meetings:** The Association member shall meet as follows:

- a. **Annual Meeting:** The annual meeting of the Owners shall be held the second week in November of each calendar year. The place of the meeting shall be at the

Community Center unless otherwise specified in the notice of the meeting. At least ten (10) but not more than thirty (30) days before the date of the annual meeting, a written notice thereof shall be personally delivered or mailed postage prepaid to each person who appears as an Owner, at his or her last known address. The notice shall state the time, place, and general purpose of the meeting.

- b. **Special Meetings:** Special meetings of the Owners may be called by the President, by any two (2) members of the Committee, or by at least twenty-five percent (25%) of the undivided Ownership interest in the Common Area. At least two (2) but not more than thirty (30) days before the date set for a special meeting, written notice thereof shall be given in the manner described in the immediately preceding Paragraph.
- c. **Waiver of Notice:** No notice of any Owners meeting shall be required if a waiver of such notice is signed by all of the Owners. Whenever all of the Owners meet in person or by proxy such meeting may not be challenged on grounds of inadequate notice.
- d. **Quorum:** The presence of a majority of the undivided ownership interest in the Project entitled to cast a vote shall constitute a quorum for the transaction of business at any Owner's meeting.
- (1) **Quorum Not Present:** If a quorum is not present at any Owner's meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours and no later than thirty (30) days, after the time set for the original meeting.
 - (2) **Quorum at Rescheduled Meeting:** The presence of at least twenty-five percent (25%) of the members of the Association entitled to vote should constitute a quorum a rescheduled meeting.
 - (3) **Percentage Approval Requirement:** Notwithstanding the foregoing provisions of this Paragraph, however, in any case in which this Declaration requires the affirmative vote of a certain percentage of Ownership interest for authorization or approval of a matter, their consent, in person by proxy or in writing is required for authorization or approval of the item, regardless of the quorum requirements.

16. **Classes of Membership & Voting Allocations:** The Association shall have two (2) classes of membership—Class A and Class B, described more particularly as follows:

- a. **Class A:** Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled on all issues to one (1) vote for each Unit in which they hold an Ownership interest subject to the following:
- (1) **One Vote:** There shall be only one (1) vote per Unit based upon the undivided percentage of ownership interest in the Common Area.
 - (2) **Subject to Assessment:** No vote shall be cast or counted for any Unit not subject to assessment:
 - (3) **Multiple Owners:** When more than one person or entity holds such interest in a Unit, the vote for such Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the

Units shall be suspended in the event more than one person or entity seeks to exercise it.

- (4) **Leased Unit:** Any owner of a Unit which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Unit to the Lessee, provided that a copy of such instrument is furnished to the Secretary at least three days prior to any meeting.

b. **Class B:** Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to six (6) votes per Unit Owned. A Class B Member and Class B Membership shall terminate upon the happening of the earlier of the following:

- (a) Units Sold-When seventy-five percent (75%) of the Units have been sold and conveyed to the new owner; or
(b) No later than five years (5) from the effective date of this declaration.

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From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Unit owned. At such time, the Declarant shall call a meeting, in the manner described in the By Laws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule Transition of the Operation and management of the entire Project to the Association.

17. **Lists of Unit Owners, Eligible Mortgages, and Eligible Insurers or Guarantors:** The Committee shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him or her; (b) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Unit which is encumbered by the Mortgage held by such person or entity; and (c) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Utah County, Utah. The Committee may for all purposes act and rely on the information concerning Unit ownership in its records or, at its option, the records of the county recorder. The address of any Owner shall be deemed to be the address of the Unit owned by such person unless the Committee is otherwise advised in writing.

18. **Capital Improvements:** Expenses for capital improvements shall be governed by the following:

a. **Committee Discretion/Expenditure Limit:** Capital improvements to the Project which cost ten percent (10%) or less of the total annual budget, and do not materially alter the nature of the Project, may be authorized by the Committee alone.

b. **Homeowner Approval/Expenditure Limit:** Any capital improvement, the cost of which will exceed such amount, must, prior to the commencement of construction, be authorized by at least a majority of the Owners.

c. **Homeowner Approval/Changing the Nature of the Project:** Any capital improvement which would materially alter the nature of the Project must,

regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven percent (67%) of the Owners.

19. **Operation, Maintenance, and Alterations:** The Units and Common Area shall be maintained by the Unit Owners and the Association as follows: ENT 55573:2002 PG 20 of 60

- a. **Area of Common Responsibility:** The Association shall maintain, repair and replace, as needed from time to time, the Common Area, and certain improvements constructed or installed thereon and in, on or about the Units (hereinafter referred to as the "Area of Common Responsibility") which shall include the roofs, exterior dwelling unit and fence surfaces, central utility systems for power, light and water, common area lighting, garbage pickup, the removal of snow and ice accumulation from the roads, parking areas and sidewalks around the, sport court, front yard maintenance (the Unit Owner is responsible to plant and replace the sod, trees, bushes, shrubs, and flowers which the Association will maintain), grass mowing and sprinkling system, common landscaping and green space, as well as the entrance to and exit from the Project. The Association shall also repair and replace the sidewalks and walkways located in the front yards of the Units, although the obligation to maintain (i.e. sweep, clean, remove the ice and snow, etc.) shall be the responsibility of the Unit Owners. The Committee shall prepare a Table of Capital Improvement, which shall contain a list of foreseeable expenditures for capital improvements within the Area of Common Responsibility. The Table shall be included in every annual budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Committee for the replacement of capital assets as they age.
- b. **Area of Personal Responsibility:** Anything to the contrary notwithstanding, each Unit Owner shall maintain his or her Unit and all of the improvements constructed or installed thereon. If an item is not included in the Area of Common Responsibility and it is located in, on, under, or above a Unit, then it shall be the responsibility of the Unit Owner, unless otherwise determined in writing by the Committee. The items for which the Unit Owner is responsible are hereinafter referred to as the "Area of Personal Responsibility" and include the following: individual utility services such as power, light, gas, hot and cold water, heating, refrigeration and air conditioning systems, fixtures, windows, doors, patios, balconies and decks, interior fence surfaces, Unit landscaping and green space, grass mowing and the sprinkler system in the rear yards, and the removal of debris, snow and ice accumulations on the porches, entryways, driveways, sidewalks and walkways to and from each Unit located on each individual Unit.
- c. **Utilities:** The Association shall provide those utility services not separately metered and billed to the individual Owners by the provider.
- d. **Standard of Care/General:** The Property shall be maintained in a useable, clean, functional, attractive and good condition, consistent with Community Standards and other similarly situated first class subdivisions in the county.
- e. **Standard of Care/Landscaping:** All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in a condition comparable to that of other similarly situated first class residential subdivisions in the county. The Committee may establish specific guidelines and restrictions on landscaping. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs, and bushes shall be neatly trimmed. In a word, all landscaping shall be tasteful, so as not to

affect adversely the value or use of any other Unit, or to detract from the uniform design and appearance of the Project.

f. **Neglect:** If the Committee determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items for which he or she is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his or her family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

- (1) **Assessment/Lien:** Such costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against his or her Unit, as provided below. ENT 55573:2002 PG 21 of 60
- (2) **Notice of Intent to Repair:** Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Committee. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days.
- (3) **Emergency Situation:** If the Committee determines that an emergency exists, then notice and the opportunity to cure the default are not necessary.
- (4) **Optional Repairs:** The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described below.
- (5) **Right of Entry:** The Association or its agents or employees shall have a right to entry upon or into any Unit or Common Area as necessary to perform such work and shall not be liable for trespass for such entry or work.

g. **Changes to Areas of Personal or Common Responsibility:** The Committee may, in its sole discretion, add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Unit Owners.

h. **Alterations to the Common Area:** Anything to the contrary notwithstanding, the Declarant may make changes to the Common Area without the consent of either the Association or the Committee, however, no Owner or resident may make any structural alterations to the Common Area without the prior written consent of the Committee.

20. **Common Area Expenses:** Each Owner, upon receipt of a deed to a Unit, shall pay his or her Common Area Fees subject to and in accordance with the restriction set forth below; provided, however, anything to the contrary notwithstanding, the Developer shall not be obligated to pay Common Area Fees until such time as any residential structure, building or dwelling unit is

substantially complete and a permanent certificate of occupancy has been issued or, in the alternative, the Developer elects in writing to commence payment, whichever first occurs.

- a. **Purpose of Common Area Expenses:** The Common Area Fees provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Committee.
- b. **Creation of Common Area Fees:** The Common Area Fees shall pay for the common expenses of the Association as may be from time to time specifically authorized by the Committee. Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Common Area Fees assessed.
- c. **Budget:** At least thirty (30) days prior to the Annual Homeowners Meeting, the Committee shall prepare and deliver to the Owners a proposed Budget which:
 - (1) **Itemization:** Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1st.
 - (2) **Basis:** Shall be based upon advance estimates of cash requirements by the Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Committee is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. ENT 55573:2002 PG 22 of 60
- d. **Apportionment:** The common profits of the property shall be distributed among and the common expenses shall be charged to, the Unit Owners equally; that is, each Owner shall pay 1/45 of the common expenses.
- e. **Approval of Budget and Assessments:** The proposed Budget and the Common Area Fees shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Common Area Fees or the Committee fails for any reason to establish the Budget and Common Area Fees for the succeeding year, then and until such time as a new budget and new Common Area Fee schedule shall have been established, the Budget and the Common Area Fees in effect for the then current year shall continue for the succeeding year.

- f. **Payment of Common Area Fees:** The Management Committee has the sole authority and discretion to determine how and when the annual Common Area Fees are paid.
- g. **Personal Obligation of Owner:** Owners are liable to pay all Common Area Fees assessed, accruing interest, late fees and collection costs, including attorney fees. Provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under an executory contract of sale such as a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Unit pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Common Area Fees which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (i) the Owner or both the legal and equitable interest in any Unit, (ii) the Owner of record in the offices of the County Recorder of Salt Lake County, Utah, (iii) both the buyer and Seller under any executory sales contract or other similar instrument. ENT 55573:2002 PG 23 of 60
- h. **Equitable Changes:** If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days written notice of any changes.
- i. **Dates and Manner of Payments:** The dates and manner of payment shall be determined by the Committee.
- j. **Reserve Accounts:** The Committee shall establish and maintain at least two (2) reserve accounts: one to pay for unexpected operating expenses and the other to pay for capital improvements. The reserve accounts shall be funded out of regular Common Area Fees.
- k. **Acceleration:** Common Area Fees shall be paid in the manner and on dates fixed by the Committee who may, at its option and its sole discretion, elect to accelerate the entire annual Common Area Fee for delinquent Owners. If, however, the Common Area Fee is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the Committee, at its option and in its sole discretion, may elect to decelerate the obligation.
- l. **Statement of Common Area Fees Due:** Upon written request, the Committee shall furnish to any Owner a statement of Common Area Fees due, if any, on his or her Unit. Failure to provide the certificate within ten (10) days after a written request shall be deemed conclusive evidence that all Common Area Fees are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.
- m. **Superiority of Common Area Fees:** All Common Area Fees and liens created to secure the obligation to pay Common Area Fees are superior to any homestead exemptions to which an Owner may be entitled.
- n. **Termination of Utility Service or Right to Use Amenities for Non-Payment:** At the discretion of the Committee, the utility service to any Owner paid for by the Common Area Fees, or the right to use the Community Center and Tot Lot, or other facilities, may be terminated if the Owner is in arrears on his or her obligation to pay Common Area Fees and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.
- o. **Suspension of Right to Vote for Non-Payment:** At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his or her

Common Area Fees, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

21. **Special Assessments:** In addition to the other Common Area Fees authorized herein, the Association may levy special assessments in any year, subject to the following:
- a. **Committee Based Assessments:** So long as the special assessment does not exceed the sum of Five Hundred and 00/100 Dollars (\$500.00) (the "Special Assessment Limit") per Unit in any one fiscal year, the Committee may impose the special assessment without any additional approval.
 - b. **Association Approval:** Any special assessment, which would exceed the Special Assessment Limit, shall be effective only if approved by a majority of the members of the Association. The Committee in its discretion may allow any special assessment to be paid in installments. ENT 55573:2002 PG 24 of 60
22. **Specific Assessments:** The Committee shall also have the power specifically to assess the Owners in a particular area pursuant to this Section as, in its discretion, it shall deem necessary or appropriate, subject to the following:
- a. **No Obligation or Waiver:** Failure of the Committee to exercise its authority under this section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section.
 - b. **Enabling Power:** The Committee may specifically assess an Owner in a particular area for the following expenses; provided, however, the specific assessment is not for any maintenance, repair or replacement ordinarily required by the Act or this Declaration and:
 - (1) **Benefit only To Specific Unit:** If the expense benefits less than all of the Units, then those Units benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit received.
 - (2) **Unequal or Disproportionate Benefit:** If the expense benefits all Units, but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received.
23. **Collection of Common Area Fees:** It is important that all Owners pay their Common Area Fees in a timely manner. Common Area Fees shall be collected as follows:
- a. **Procedure:** In pursuing the collection of delinquent accounts, it is suggested that the Committee follow these guidelines and policies:
 - (1) **Delinquent Fees:** Any Common Area Fees which are not paid when due are delinquent and a lien attaches automatically, regardless of whether a notice is recorded.
 - (2) **Late Fees and Accruing Interest:** Any Common Area Fees delinquent for a period of more than ten days shall incur a late charge of Twenty five dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of one and ½ percent (1.5%) per month shall accrue on all delinquent accounts. The

Committee may, in its sole discretion, waive late fees and accruing interest but is not required to do so.

- (3) **Notice of Delinquency:** The Association shall give a notice of delinquency to any Owner who has not paid his or her Common Area Fees in a timely manner.
- (4) **Notice of Lien:** If the Common Area Fees are not paid within a timely manner, and no satisfactory arrangements have been made to pay the debt, a notice of lien evidencing the unpaid amounts, accruing interest, late charges, attorney's fees, the cost of a foreclosure report, and other additional charges permitted by law should be filed with the County Recorder. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association's attorney, manager, Committee Member, or other designated agent may execute it. ENT 55573:2002 PG 25 of 60
- (5) **Foreclosure of Lien and/or Collection Action:** If the Common Area Fees remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or foreclose the lien.
- b. **Personal Obligation:** Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.
- c. **No Waiver:** No Owner may waive or otherwise exempt himself or herself from liability for the Common Area Fees provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his or her Unit.
- d. **Duty to Pay Independent:** No reduction or abatement of Common Area Fees shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or Committee under this Declaration or the By Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Common Area Fees being a separate and independent covenant on the part of each Owner.
- e. **Application of Payments:** All payments shall be applied as follows: Additional Charges, Delinquent Common Area Fees and Current Common Area Fees.
- f. **Foreclosure of Lien as Mortgage or Trust Deed:** The lien for nonpayment of Common Area Fees may be enforced by sale or foreclosure of the Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosure in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

- g. **Appointment of Trustee:** If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he or she is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his or her right, title, and interest in and to the real property for the purpose of securing his or her performance of the obligations set forth herein.
- h. **Attorney in Fact:** Each Owner by accepting a deed to a Unit hereby irrevocably appoints the Association as his or her attorney in fact to collect rent from any person renting his or her Unit, if the Unit is rented and Owner is delinquent in his or her Common Area Fees. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Common Area Fees are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

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24. **Liability of Committee:** The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he or she may be a party by reason of being or having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Committee may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Committee, or former officer or member of the Committee, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers and directors insurance coverage to fund this obligation, if such insurance is reasonably available.

25. **Insurance:** The Committee shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, insurance on the Common Areas satisfying at least the following requirements:

- a. **Property Insurance:** Blanket property insurance using the standard "Special" or "All-Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall mean or refer to "earthquake" or other special risks not included in the standard condominium casualty policy. The Committee may add this additional coverage, as it deems necessary in its best judgment and in its sole discretion.
- b. **Flood Insurance:** If the property is or comes to be situated in an area having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), or any successor program, a policy of flood insurance shall be maintained covering the property in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under NFIP for Insurable Property within a designated flood

hazard area; or (2) one hundred percent (100%) of current replacement cost of the Insurable Property. Such policy shall be in a form, which meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

- c. **Liability Insurance:** Liability Insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated first class subdivisions in the county. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.
- d. **Director's and Officer's Insurance:** Adequate director's and officer's liability insurance (aka Errors and omissions insurance). ENT 55573:2002 PG 27 of 60
- e. **Fidelity Bond:** A separate fidelity bond in a reasonable amount to be determined by the Committee to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:
 - (1) **Agents:** Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee for the Association.
 - (2) **Amount of Coverage:** The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units, plus reserve funds.
 - (3) **Quality of Coverage:** The bonds required shall meet the following additional requirements:
 - (a) They shall name the Committee, the Owners Association, and the Property Manager as obligee
 - (b) If the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense;
 - (c) The premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and

- (d) The bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, the VA, FHA, and FNMA.
- f. **Earthquake Insurance:** shall not be required unless requested by a least seventy five percent (75%) of the Members of the Association. ENT 55573:2002 PG 28 of 60
- g. **Miscellaneous Items:** The following provisions shall apply to all insurance coverage:
- (1) **The Insured:** The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Unit Owners of the Timpanogos Heights HOA Condominium Project for the use and benefit of the individual Owner.
 - (2) **Designated Representative:** The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.
 - (3) **Beneficiary:** In any policy covering the entire Project, each Owner and his or her I, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.
 - (4) **Certificate of Insurance:** Evidence of insurance shall be issued to each Owner and Mortgagee upon request.
 - (5) **Mortgage Provisions:** Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each I.
 - (6) **Sundry Provisions:** Each insurance policy shall contain at least the following additional miscellaneous items:
 - (a) **Waiver of Subrogation:** A waiver of the right of a subrogation against Owners, individually;
 - (b) **Individual Neglect:** A provision that the insurance is not prejudiced by any act or neglect of any individual Owner; and
 - (7) **Deductible:** The deductible on a claim made against the Association's liability insurance policy shall be paid by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. Provided, however, if the loss is caused by an act of god or nature, or by an element beyond the control of the

Association, then the Unit Owner shall be responsible for and shall pay the deductible.

- (8) **Individual Insurance:** No Owner shall be entitled to exercise his or her right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners and their mortgages, may realize under any insurance policy which the Association may have in force on the Property at any particular time. ENT 55573:2002 PG 29 of 50
- (9) **Primary Coverage:** The insurance coverage of an Owner shall, in the event the Association also has insurance covering the loss, be primary and the insurance of the Association shall be secondary.
- (10) **Prompt Repair:** Each Owner further covenants and agrees that in the event of any partial loss, damage, or destruction of his or her Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.
- (11) **Disbursement of Proceeds:** Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgage of a Unit, and may be enforced by them.
- (12) **Special Endorsements:** Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class subdivisions in the county.
- (13) **Quality of Insurance Carrier:** Each insurance policy required hereby shall be written by an insurance carrier licensed to transact business in the State of Utah and who has the highest rating by Best's Key Rating Guide.
- (14) **Restrictions on Policies:** No such insurance policy shall be maintained where:
- (a) **Individual Assessments Prohibited:** Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, or I, the Committee, the Association, FNMA, or the designee of FNMA.
 - (b) **Payments Contingent:** By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or
 - (c) **Mortgagee Limitation Provisions:** The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without

limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

- (15) **Intent:** The foregoing provisions shall not be constructed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Committee or Association may deem appropriate from time to time.

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26. Destruction, Condemnation, and Obsolescence: The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

a. **Definitions:** Each of the following terms shall have the meaning indicated:

- (1) **"Substantial Destruction"** shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is twenty five percent (25%) or more of the estimated restored value of the Project.
- (2) **"Partial Destruction"** shall mean any other damage or destruction to the Project or any part thereof.
- (3) **"Substantial Condemnation"** shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of the restoration over the funds available is twenty five percent (25%) or more of the estimated restored value of the Project.
- (4) **"Partial Condemnation"** shall mean any other such taken by eminent domain or grant or conveyance in lieu thereof.
- (5) **"Substantial Obsolescence"** shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty Five percent (25%) or more of the estimated restored value of the Project.
- (6) **"Partial Obsolescence"** shall mean any state of obsolescence or disrepair, which does not constitute substantial obsolescence.
- (7) **"Restored Value"** shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.
- (8) **"Estimated Cost of Restoration"** shall mean the estimated costs of restoring the Project to its former condition.
- (9) **"Available Funds"** shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in

lieu of condemnation payable to the Owner or I for the condemnation or taking of the Unit in which they are interested.

- b. **Determination by Committee:** Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether substantial obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.
- c. **Restoration of the Project:** Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent (67%) of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one percent (51%) of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.
- d. **Notices of Destruction or Obsolescence:** Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible I a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.
- e. **Excess Insurance:** If the insurance proceeds condemnation awards, or payments in lieu of condemnation actually received when Restoration is undertaken, then the excess funds shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This covenant is also for the benefit of the Association and any I, and, therefore, may also be enforced by them. Payment to any Owner whose Unit is the subject of Mortgage shall be made jointly to such Owner and interested I.
- f. **Inadequate Insurance:** In the event the cost of Restoration exceeds Available Funds, all of the Units shall be assessed for the deficiency on the basis of their respective percentages of undivided Ownership interest in the Common Area.
- g. **Reallocation in Event of Partial Restoration:** In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units.
- h. **Sale of Project:** Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, Condominium Ownership under this Declaration and the Survey Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested I.

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- i. **Authority of Committee to Represent Owners in Condemnation or to Restore or Sell:** The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.
- j. **Settlement Proceeds:** The award in any condemnation proceeding and the proceeds of any settlement related there to shall be payable to the Association for the use and benefit of the Owners and their Mortgages as their interests may appear.
- k. **Restoration Power:** The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.
- l. **Right of Entry:** Such authority shall include the right and power to enter into any contract, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

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27. **Consent in Lieu of Vote:** In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions:

- a. **Ninety-Day Limit:** All necessary consents must be obtained prior to the expiration of ninety (90) days from the time the first written consent is obtained; and
- b. **Change In Ownership:** Any change in Ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered to taken into account for any purpose.

28. **Mortgagee Protection:** The lien or claim against a Unit for unpaid Common Area Fees levied by the Committee or by the Association pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such Common Area Fees become due, subject to the following:

- a. **Statutes:** In the event that the State of Utah should enact the Uniform Planned Residential Development Act or any other statute applicable to condominiums with a provision that would allow such Common Area Fees including special assessments, to have a limited priority over a Mortgage recorded before such Common Area Fees became due, or in the event that the State of Utah should enact any law which would allow a lien for unpaid Common Area Fees to survive foreclosure or exercise of a power of sale, all such assessments and charges, including special assessments, shall after the date of such enactment be made due and payable to the Committee or the Association on a monthly basis and the lien for any fees, late charges the Association assessed in connection with such unpaid Common Area Fees shall be deemed subordinate to the first Mortgage in the Unit upon which such Common Area Fees are levied.
- b. **Effects of Voluntary and Involuntary Sale:** The lien or claim against a Unit for such unpaid Common Areas Fees shall not be affected by any sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise or a power of sale available there under shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Common Area Fees, which are extinguished in accordance with the foreclosure or power of sale, shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit the lien of any Common Area Fees becoming due thereafter.
- c. **Books and Records Available for Inspection:** The Committee or Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or

guarantors of any Mortgage current copies of the Declaration, By-Laws, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying available.

- d. **Right to Financial Statement:** The holder, insurer, or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.
- e. **Management Contracts:** Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into the Committee or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause upon at least sixty (60) days prior written notice to the other party thereto. ENT 55573:2002 PG 33 of 60
- f. **Eligible Mortgage Designation:** Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible I" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:
- (1) **Condemnation Loss or Award:** Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.
 - (2) **Delinquency:** Any delinquency in the payment of Common Area Fees owed by the Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.
 - (3) **Lapse of Insurance:** Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Committee or the Association.
 - (4) **Consent Required:** Any proposed action, which would require the consent of the specified percentage of Eligible Mortgagees.
 - (5) **No Right of First Refusal:** The right of an Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restriction.

29. **Amendment:** This Declaration may be amended as follows:

- a. **Consent of the Owners:** The affirmative vote of at least sixty seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration or the Record of Survey Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained; and

- b. **Consent of Eligible I:** The consent of at least sixty seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one percent (51%) of the undivided Ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Survey Map which establishes, provides for, governs, or regulates any of the following: (i) voting; (ii) assessments, assessment liens, or subordination of liens; (iii) reserves for maintenance, repair and replacement of the Common Areas; (iv) insurance or fidelity bonds; (v) limitations and restrictions on the right to use of the Common Areas; (vi) responsibility for maintenance and repair of the several portions of the Project; (vii) expansion or withdrawal of property to or from the Project; (viii) the boundaries of any Unit; (ix) the percentages of Ownership interest in the Common Areas; (x) convertibility of Units into Common Areas, or vice versa, the conversion of Common Areas into limited Common Area, or vice versa; (xi) the imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Unit; (xiii) express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and (xiv) the requirement that the Project be professionally managed rather than self managed. Any addition or amendment shall not be considered material for purposes of this Paragraph (b) if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible I to whom a written request to approve an addition or amendment to this Declaration or the Survey Map is required shall be mailed postage prepaid to the address for such I shown on the list maintained by the Association. Any Eligible I who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Survey Map or the termination of the legal status of the Project as a condominium if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

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30. **Notice and Hearing:** In the event of a claimed violation of the Act, Declaration, By-Laws, or administrative rules and regulations governing the Project, a Member or resident shall be entitled to the following:

- a. **Notice:** Written notice specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the member will have an opportunity to be heard by the Committee. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the member at the address given by the member to the Committee for the purpose of service of notice or to the address of the member's Unit if no other address has been provided. Any address may be changed from time to time by giving written notice to the Committee.
- b. **Cost and Fees:** If the violation, or the failure to correct or remedy a violation, results or may result in the expenditure of funds, the notice shall also state that the Committee may vote to assess the adverse party, levy a fine, or impose other sanctions if the Committee finds that a violation has occurred.
- c. **Final Determination:** After the hearing has taken place, the Committee shall (i) determine whether a violation has occurred and, if so, may impose a fine or issue sanctions which shall become effective not less than five (5) days after the date of the hearing; or (ii) take such other action as may be appropriate. The determination of the

Committee shall be final. However, nothing herein shall be construed to or taking any other emergency action it deems necessary and subsequently providing Notice and Hearing.

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31. **Declarant's Sales Program:** Notwithstanding anything to the contrary, until Declarant has sold all the Units owned by it in the Project or the expiration of a reasonable sales period following seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder, whichever first occurs (hereinafter referred to as the "Occurrence"), neither the Owners, the Association nor the Committee shall interfere with the completion of improvements and sale of all remaining Units, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Units owned by Declarant:
- a. **Sales Office and Model Units:** Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Units at any one time. Such office and/or models may be one or more of the Units owned by it, or one or more of any separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;
 - b. **Promotional:** Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.
 - c. **Common Area Use:** Declarant shall have the right to use the Common Areas of the Project including but not limited to the swimming pool and sport court to facilitate sales.
 - d. **Relocation and Removal:** Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the occurrence, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.
32. **Limitation on Improvements by Association:** Until the occurrence described above, neither the Association nor the Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.
33. **Completion Obligation:** Declarant hereby covenants in favor of each Owner that within two (2) years from the date of any contract of sale:
- a. **Units:** Each Unit which an Owner has contracted to purchase, the Building within which any dwelling unit is contained or is to be contained, and the appurtenant Limited Common Area shall be substantially constructed, and ready for use or occupancy (as the case may be); and
 - b. **Common Area:** There shall be substantially completed and usable as part of the Common Areas all planned landscaping, green space, sport court, playground areas, picnic areas, sidewalks, parking facilities, roads, fences, outdoor lighting, and utility lines and conduits adjacent to the Unit or Building in which a Unit is located, and necessary for its use.
34. **Declarant's Rights Assignable:** All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Units or Buildings in the Project title to which is vested

in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.

35. **FHA/VA Approval:** As long as there is Class B membership, the following actions will require the prior approval of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"): (a) Annexation of additional properties, (b) Dedication of additional Common Area or Material Amendments to this Declaration (i.e. modifications which would change the nature of the Project). ENT 55573:2002 PG 36 of 60
36. **Transfer of Management:** Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select members of the Committee, and to transfer management of the Project to the Association. If and when Declarant elects to do so, Declarant shall send written notification to each Owner of the effective date of the transfer (the "Transfer or Transition Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the members of their own Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Area expenses of the Committee incurred prior to the Transfer Date to be paid in full on or before such date.
37. **Certain Provisions Applicable to Declarant:** Notwithstanding any other provisions herein contained, for so long as Declarant continues to own any of the Units the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Common Area Fees or assessments, except as herein otherwise provided, as to each Unit owned by Declarant in accordance within the Declaration.
- Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.
 - No amendment may be made to the Declaration without the written consent of Declarant so long as Declarant retains the Ownership of five (5) or more Units; provided, however, that the obligation to acquire said written consent of Declarant, shall cease on a date two (2) years from the date of recording of the final phase of the Declaration.
38. **Interpretation:** To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof, are incorporated herein, and shall prevail if they contravene this declaration. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way effect the manner in which any provision here of is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforce ability of the remainder hereof.
39. **Covenants to Run with Land:** This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or

occupant of a Unit shall comply with, all interests in all Units shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

40. **Enforcement and Right to Recover Attorney's Fees:** Should the Association or Committee required to take action to enforce this Declaration, By-Laws or any administrative rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorney's fee, which may arise or accrue.

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41. **Security:** The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. However, neither the Association nor the Committee shall in any way be considered insurers or guarantors of security within the Project. Neither the Association nor the Committee shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and occupants, their guests and invitees, as applicable, acknowledge that neither the Association nor the Committee represent or warrant that any security measures undertaken will insure their safety. All Owners and Occupants, their guests and invitees, acknowledge and understand that the Association and Committee are not insurers of their safety and they hereby assume all risks for loss or damage to their person or property and further acknowledge that the Association and Committee have made no representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Project.

42. **Mechanics Liens:** Mechanics liens shall be filed in the office of the County Recorder as follows:

- a. **Association/Goods or Services:** Mechanics liens for labor, materials or supplies purchased by the Association may be filed against ALL Unit Owners in the Project and their appurtenant interest in the Common Area, and shall be indexed in the public records under the name of the Association and Community. If the Association has encumbered the Common Areas and thereafter defaults on its obligations, the lien holder must exercise its rights against the Common Areas before it may proceed against any Unit. Any Owner wishing to release that lien as to his or her Unit may pay the pro rata share of the total amount of the lien and that shall be sufficient to release the lien against his or her Unit.
- b. **Unit Owner/Goods or Services:** Mechanics liens filed for labor, materials or supplies benefiting a particular Unit shall be filed against that Unit and its appurtenant interest in the Common Area.
- c. **Constructive Consent:** Any person or entity who elects to perform labor or provide materials at this Project agrees to be bound by and subject to the terms of this Section.

43. **Private Right of Action:** Any individual unit or lot owner, in the Condominium Project, who is aggrieved by any other owner or owners, or by the acts of the association or any officer, agent, director, or manager, shall have a private right of action against the foregoing to enforce the terms of the covenants, conditions, and restrictions or any right set forth under Utah's Condominium Ownership Act. The prevailing party in said litigation, shall be entitled to an award of costs and attorney's fees.

44. **Agent for Services of Process:** The President of the Association is the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent is Dale L. Rindlisbacher and the initial office of the Registered Agent is 2785 West 9000 South, West Jordan, Utah 84088.
45. **Effective Date:** This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Survey Map shall take affect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

EXECUTED the day and the year first above written.

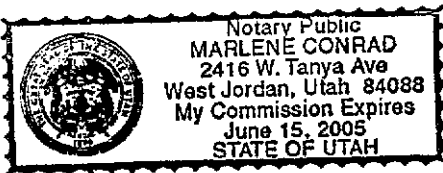
TIMPANOGOS HEIGHTS, L.L.C. a Utah Limited Liability Company

BY: *Dale Rindlisbacher*
TITLE: Member

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State of Utah)
)SS:
County of Salt Lake)

On the 14th day of May, 2002, personally appeared before me Dale L. Rindlisbacher, who by me being duly sworn, did say that he is the Member of Timpanogos Heights, L.L.C., a Utah Limited Liability Company, and that the within and foregoing instrument was signed in behalf of said Limited Liability Company by authority of a resolution of its Board of members, and said Dale L. Rindlisbacher, duly acknowledged to me that said Limited Liability Company executed the same.



Marlene Conrad
NOTARY PUBLIC
Residing At:
Commission Expires:

MTC File No. 73729-CA
LEGAL DESCRIPTION

~~ENT 55231:2001 PG 1 of 3~~

Exhibit "A"

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A PARCEL OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AMERICAN FORK, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A MONUMENT MARKING THE EAST 1/4 CORNER OF SAID SECTION 24; THENCE NORTH 0 DEGREES 24'13" WEST ALONG THE SECTION LINE A DISTANCE OF 1410.42 FEET; THENCE WEST 1081.98 FEET TO THE REAL POINT OF BEGINNING; THENCE NORTH 70 DEGREES 10'48" WEST A DISTANCE OF 435.43 FEET; THENCE ALONG A BLOCK WALL AND THE EXTENSION OF THE WALL THE FOLLOWING 3 COURSES: 1) NORTH 01 DEGREES 07'07" EAST A DISTANCE OF 275.12 FEET; 2) THENCE SOUTH 89 DEGREES 28'38" EAST, A DISTANCE OF 154.79 FEET; 3) THENCE NORTH 00 DEGREES 31'56" EAST, A DISTANCE OF 274.44 FEET; THENCE NORTH 89 DEGREES 52'23" EAST, A DISTANCE OF 252.85 FEET TO A FENCE LINE; THENCE SOUTH 00 DEGREES 29'09" WEST, ALONG SAID FENCE LINE A DISTANCE OF 696.31 FEET TO THE REAL POINT OF BEGINNING.

EXHIBIT B
PERCENTAGES OF OWNERSHIP INTEREST

<u>UNIT NO.</u>	<u>PERCENTAGE</u>
1	1/45
2	1/45
3	1/45
4	1/45
5	1/45
6	1/45
7	1/45
8	1/45
9	1/45
10	1/45
11	1/45
12	1/45
13	1/45
14	1/45
15	1/45
16	1/45
17	1/45
18	1/45
19	1/45
20	1/45
21	1/45
22	1/45
23	1/45
24	1/45
25	1/45
26	1/45
27	1/45
28	1/45
29	1/45
30	1/45
31	1/45
32	1/45
33	1/45
34	1/45
35	1/45
36	1/45
37	1/45
38	1/45
39	1/45
40	1/45
41	1/45
42	1/45
43	1/45
44	1/45
45	1/45

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EXHIBIT C
BY-LAWS FOR TIMPANOGOS HEIGHTS CONDOMINIUM PROJECT

The following is the By-Laws of the Association of Unit Owners who is obliged to operate, manage and regulate the Timpanogos Heights Condominium Project:

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ARTICLE I

PLAN OF UNIT OWNERSHIP AND INCORPORATION

1. **Submission:** These By-Laws are referred to and incorporated by reference in the Declaration of Covenants, Conditions and Restrictions of the Timpanogos Heights Condominium Project (the "Declaration"), which is located in Utah County, State of Utah. These By-Laws shall govern the administration of the Timpanogos Heights Condominium Project and the Association of Unit Owners.
2. **Organizational Form:** If the Association forms a limited liability company or corporation under the laws of the State of Utah, then these By-Laws shall also function and operate as the By-Laws of the company; and in the event of any conflict, incongruity or inconsistency between these By-Laws and the Operation Agreement, these By-Laws shall in all instances control.
3. **Office and Registered Agent:** The Registered Agent of the Association is Dale Rindlisbacher of Timpanogos Heights L.L.C. 2785 West 9000 South West Jordan, Utah 84088; however, after transfers of management and control of the Association is made by the Developer to the Association, the Registered Agent of the Association shall be the President of the Association and the Registered Office of the Association shall be the home of the President or such other place as shall be designated by him.
4. **By-Laws Applicability:** All present and future Owners, occupants, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted entrance at Timpanogos Heights Condominium Project shall be subject to and abide by these By-Laws.

ARTICLE II

1. **Composition:** The Association of Unit Owners is a mandatory association consisting of all Unit Owners at Timpanogos Heights Condominium Project.
2. **Voting:** Each Unit shall have one vote. Units with multiple owners must elect a representative to cast their vote. A vote cast, without objection, by an apparent representative of multiple owners shall be binding upon the parties. Entities may vote by means of an authorized agent.
3. **Place of Meeting:** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Committee from time to time and stated in the notice of meeting.
4. **Annual Meeting:** Unless otherwise designated by the Committee, the annual meeting of the Association shall be held at 7:00 p.m. on the second Tuesday of November of each year, or at such other suitable date as may be designated by the Committee from time to time. When such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be the principal office of the Association unless otherwise specified in the notice of meeting.
5. **Special Meetings:** The President or two of the members of the Management Committee or Board may call a special meeting of the Association, or if s/he is so directed by

resolution of the Committee or upon receipt of a petition signed and presented to the Secretary of the Committee by at least 25% of the members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

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6. **Notice of Meeting:** It shall be the duty of the Secretary to hand deliver or mail, by regular U.S. mail postage prepaid, a notice of (a) each annual meeting of the Owners not less than then and not more than thirty days in advance of such meeting; and (b) each special meeting of the Owners at least three days and not more than twenty days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of his or her respective Unit or such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.
 7. **Voting Requirements:** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, s/he shall be in full compliance with all of the terms, covenants, and conditions of the Act, Declaration, By-Laws, Rules and Regulations, and shall have fully paid all Common Area Fees and/or Additional Charges due.
 8. **Proxies:** The votes appertaining to any Unit may be cast pursuant to a proxy or proxies, duly executed by or on behalf of the Unit Owner, or in cases where the Unit Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Unit Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is no signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Committee not less than 48 hours before the meeting. Only individual Unit Owners or the legal representative of an organizational Unit Owner may be proxies.
 9. **Quorum Voting:** A majority of the members of the Association shall constitute a quorum for the adoption of decisions. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. The Owners present at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Unit Owners representing a majority of the members of the Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Unit Owners to approve any action, however, the percentage shall be required anything to the contrary notwithstanding.
 10. **Order of Business:** The order of business at all meetings of the Association shall be as follows:
 - (a) roll call;
 - (b) proof of notice of meeting;
 - (c) reading of minutes of preceding meeting;
 - (d) reports of officers;
 - (e) report of special committees, if any;

- (f) election of inspectors of election, if applicable;
- (g) election of Committee Members, if applicable;
- (h) unfinished business; and
- (i) new business.

11. **Conduct of Meeting:** The President shall, or in his or her absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as record of all transactions occurring thereat.
- (a) **Open Meetings:** A portion of each meeting of the Committee shall be open to all members of the Association, but members other than members of the Committee may not participate in any discussions or deliberation unless expressly so authorized by a majority of a quorum of the Committee. The Committee may establish procedures, policies and guidelines for the conduct of its meetings and may prohibit photographs, electronic recordation or video recorders.
 - (b) **Executive Session:** The Committee may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an Executive Session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an Executive Session shall first be announced in open session.
 - (c) **Action Without A Formal Meeting:** Any action to be taken at a meeting of the Committee may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all members of the Committee.

ARTICLE III

MANAGEMENT COMMITTEE

1. **Powers and Duties:** The affairs and business of the Association shall be managed by the Management Committee. The Management Committee shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration any may do all such acts and things necessary to operate and maintain the Project. The Committee shall have the power from time to time to adopt any Rules and Regulations deemed proper for the exercise of its management powers. The Committee may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for at least the following.
- (a) Preparation of annual budget in which there shall be established the contribution of each Owner to the common area fees.
 - (b) Establishing common area fees against Owner to defray the costs and expenses of the Project, establishing the means and methods of collecting such common area fees from the Owners, and establishing the period and method of the installment payment of the annual assessment for common area fees subject to these guidelines. Unless otherwise determined by the Committee, each Owner's common area fee may be payable in equal monthly installments, due and payable in advance on the first day of each month of each month. However, in the event a Unit Owner fails to make an installment payment in a timely manner, then the entire annual assessment may be accelerated by the Committee and shall thereafter be automatically due and payable

without further notice, although the Committee may subsequently elect to de-accelerate the obligation.

- (c) Providing for the operation, care, upkeep, replacement, maintenance, and surveillance of all the Common Areas and services of the Project. ENT 55573:2002 PG 44 of 60
- (d) Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Common Areas, and providing services for the property, and, where appropriate, providing the compensation of such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Owners.
- (e) Collecting the common area fees against the Owners, depositing the proceeds thereof in a bank depository, which it shall approve, and using the proceeds to carry out the administration of the Property.
- (f) Making, amending, and enforcing Rules and Regulations respecting the Declaration, these By-Laws, and the use of the Property.
- (g) Opening of bank accounts on behalf of the Association and designating the signatories required therefore.
- (h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of these By-Laws, after damage or destruction by fire or other casualty.
- (i) Enforcing by legal means the provisions of the Declaration, these By-Laws, and Rules and Regulations for the use of the Property adopted by it, and bringing any proceedings, which may be instituted on behalf of the Owners.
- (j) Obtaining and carrying insurance against the risks, casualties and liabilities, as provided in the Declaration and paying the premium cost thereof.
- (k) Paying the cost of all services rendered to the Project and not billed directly to Owners of individual Units.
- (l) Keeping books and records with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Project, specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Committee for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon resolution of the Association, may be audited at least once a year by an outside auditor employed by the Committee who shall not be a resident of the Project, or an Owner therein. The cost of such audit shall be a Common Expense. A copy of the annual audit report shall be supplied to any first mortgagee of any Unit in the Project who requests the same in writing from the Secretary.
- (m) Providing where necessary all water, waste removal, electricity, and cable t.v. and other necessary utility services for the Common Areas and such services to the Units, including but not limited to heating, as are not separately metered or charged to the Unit Owners thereof.
- (n) To pay any amount necessary to discharge any mechanic's or material men's lien or other encumbrance levied against the Property, or any part thereof, which may in the opinion of the Committee constitute a lien against the Property or against the Common Areas, rather than merely against the particular Unit. When one or more Unit Owners are responsible for the existence of such a lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Committee

by reason of said lien or liens shall be specially assessed to said Unit Owners and shall, until paid by said Unit Owners, constitute a lien on the interest of said Unit Owners in the Property which lien may be perfected and foreclosed in the manner provided in the Declaration.

- (o) To give notice of and to provide hearings for alleged infractions of the Declaration, By-Laws or administrative rules and regulations, issue citations and/or levy fines for violations of the Declaration, By-Laws, or Rules and Regulations.
 - (p) To make emergency repairs. ENT 55573:2002 PG 45 of 60
 - (q) At the expense of the Owner, or Occupant, to tow away or otherwise remove any motor vehicle parked, stored, or standing in an unauthorized area.
 - (r) To evict non-Owner Occupants in material violation of the Declaration, By-Laws, or any administrative rules and regulations.
 - (s) To do such other things and acts necessary to accomplish the foregoing and not inconsistent with the Act, the Declaration, the By-Laws, or to do anything required by a proper resolution of the Management Committee or Association.
2. **Composition of Management Committee:** The Management Committee shall be composed of at least three but no more than nine members. Only individual Unit Owners or officers or agents of organizational Owners other than individuals shall be eligible for Committee Membership.
 3. **Election and Term of Office of the Committee:** The term of office of membership on the Committee shall be two years. At the expiration of the member's term, a successor shall be elected.
 4. **Organizational Meeting:** The first meeting of the members of the Committee shall be immediately following the annual meeting of the Association or at such other time and place designated by the Committee.
 5. **Regular Meetings:** Regular meetings of the Committee shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Committee.
 6. **Special Meetings:** Special meetings of the Committee may be called by the President, Vice-President, or a majority of the members on at least forty-eight hours prior notice to each member. Such notice shall be given personally, by regular U.S. mail postage prepaid, or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Committee shall be valid for any and all purposes.
 7. **Waiver of Notice:** Before or at any meeting of the Committee, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Committee shall constitute a waiver of notice. If all the members are present at any meeting of the Committee, no notice shall be required and any business may be transacted at such meeting.
 8. **Committee's Quorum:** At all meetings of the Committee, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Committee members present at a meeting at which a quorum is present shall be deemed to be the acts of the Committee. If, at any meeting of the Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no longer than two days. At any such rescheduled meeting, any business might have been transacted at the meeting as originally called may be transacted without further notice.
 9. **Vacancies:** Vacancies in the Committee caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Committee at a special meeting of the Committee held for that

purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Committee; and each person so elected shall be a member for the remainder of the term of the member so replaced and until a successor is elected at the next annual meeting of the Association. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

10. **Removal of Committee Member:** A member may be removed with or without cause, and his or her successor elected, at any duly quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Committee Member who misses 25% or more of the Committee Meetings or who misses three consecutive meetings, in any calendar year, shall be automatically removed from the Committee.
11. **Conduct of Meetings:** The President shall preside over all meetings of the Committee and the Secretary shall keep a minute book of the Committee recording therein all resolutions adopted by the Committee and a record of all transactions and proceedings occurring at such meetings.
12. **Report of Committee:** The Committee shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

ARTICLE IV

OFFICERS

1. **Designation:** The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Committee. The Committee may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Committee. The same person may hold two or more offices, except that the President shall not hold any other office.
2. **Election of Officers:** The officers of the Association shall be elected annually by the Committee at the organization meeting of each Committee and shall hold office at the pleasure of the Committee. Any vacancy in an office shall be filled by the Committee at a regular meeting or special meeting called for such purpose.
3. **Removal of Officers:** The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Committee may be removed at any time by the affirmative vote of a majority of the Committee, and his or her successor may be elected at any regular meeting of the Committee, or at any special meeting of the Committee called for such purposes.
4. **President:** The President shall be the chief executive officer; s/he shall preside at meetings of the Association and the Committee and shall be an ex officio member of all committees; s/he shall have general and active management of the business of the Committee and shall see that all orders and resolutions of the Committee are carried into effect. S/he shall have all of the general powers and duties, which are usually vested in, or incident to the use of president of a stock corporation organized under the laws of the State of Utah.
5. **Vice-President:** The Vice-President shall, in the absence or disability of the President, perform the duties and exercises the powers of the President, and shall perform such other duties as the Committee or the President shall prescribe. If neither the President nor

the Vice-President is able to act, the Committee shall appoint a member of the Committee to do so on an interim basis.

6. **Secretary:** The Secretary shall attend all meetings of the Committee and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him or her for that purpose and shall perform like duties for committees when required. S/he shall give, or cause to be given, notices for all meetings of the Association and the Committee and shall perform such other duties as may be prescribed by the Committee. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Committee including resolutions.
7. **Treasurer:** The Treasurer shall have custody of all funds and securities that are not under the control of the Managing Agent, and with the Assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Committee. S/he shall disburse funds as ordered by the Committee, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Committee, or whenever they may require it, an account of all his or her transactions as Treasurer and of the financial condition of the Project.

ARTICLE V

FISCAL YEAR

The Fiscal year of the Association shall be the calendar year consisting of the twelve-month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Committee should it be deemed advisable or in the best interests of the Association.

ARTICLE VI

AMENDMENT TO BY-LAWS

1. **Amendments:** These By-Laws may be modified or amended either (i) by the affirmative vote of a majority of the members of the Association or (ii) pursuant to a written instrument of consent duly executed by a majority of the members of the Association provided all of the written consents are obtained within a ninety-day period.
2. **Recording:** An amendment to these By-Laws shall become effective immediately upon recordation in the office of the County Recorder of Utah County, State of Utah.

ARTICLE VII

NOTICE

1. **Manner of Notice:** All notices, demands, bills, statements, or other communications provided for or required under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage prepaid, (i) if to an Owner, at the address of his or her Unit and at such other address as the Owner may have designated by notice in writing to the Secretary; or (ii) if to the Committee or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.
2. **Waiver of Notice:** Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

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ARTICLE VIII

COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. **Compliance:** These By-Laws are set forth in compliance with the requirements of the Act.
2. **Conflict:** These By-Laws are subordinate and subject to all provisions of the Act and the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration or the Act. In the event of any conflict between these By-Laws and the Act or Declaration, the provisions of the Act or Declaration shall control.
3. **Severability:** If any provisions of these By-Laws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstances is held invalid, the validity of the remainder of these By-Laws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.
4. **Waiver:** No restriction, condition, obligation, or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce it.
5. **Captions:** The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.
6. **Gender and Grammatical Disclaimers:** Whenever in these By-Laws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine.
7. **Liability of Committee Members:** The members of the Committee and the officers of the Association shall not be liable to any member of the Association for any damage, loss or liability arising out of or caused by their voluntary participation as a member of the Committee, including but not limited to any claims due to negligence, mistake of judgment, or for any acts or omissions made in good faith. In addition, the members of the Association agree to indemnify and hold the members of the Committee and officers of the Association harmless from any and all claims arising out of or caused by their voluntary participation as a member of the Committee or officer of the Association to the extent any damage, loss or liability is not covered by insurance, unless caused by gross negligence or willful neglect.

8. **Attorney's Fees and Costs:** If an Owner or occupant, their families, guests or invitees shall, at any time, violate the terms, covenants, or conditions of these By-Laws, and the Committee shall be required to take action to enforce the same, regardless of whether a lawsuit is commenced, the Owner or occupant shall reimburse the Committee for all costs and expenses, including but not limited to a reasonable attorney's fee, necessitated thereby. To secure payment of any unpaid costs or fees, the Committee shall have the right and power to file a lien against the Unit owned or occupied, and may proceed to collect the unpaid costs and fees the same as if it were unpaid common area fees. In the event of a breach or anticipated breach by an Owner or occupant, their family, guests or invitees, of any of the terms, covenants, or conditions of these By-Laws, the Committee shall have, in addition to any other remedies provided by law or equity, the right to injunctive relief and damages.
9. **Persons Bound:** All references herein to an Owner, Occupant, Tenant, Renter, Lessee, Guest, or Invitee shall be deemed to include their respective executors, administrators, employees, representatives, legatees, distributees, successors and assigns; and the terms, covenants, and conditions herein contained shall apply to and be binding upon them.

DATED this 14 day of May, 2002.

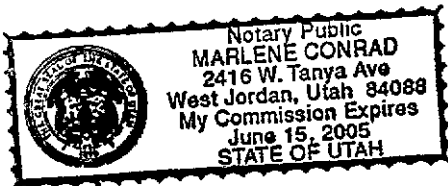
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Declarant:
Timpanogos Heights L.L.C.

BY: Dale Rindlisbacher
TITLE: Member

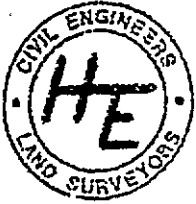
State of Utah)
)SS: _____
County of Utah)

On the 14th day of May, 2002, personally appeared before me Dale L. Rindlisbacher, who by me being duly sworn, did say that he is the Member of Timpanogos Heights, L.L.C., a Utah Limited Liability Company, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of members, and said Dale L. Rindlisbacher, duly acknowledged to me that said corporation executed the same.



Marlene Conrad
NOTARY PUBLIC
Residing At:
Commission Expires:

EXHIBIT D
COMMON AREA LEGAL DESCRIPTION



HUBBLE ENGINEERING, INC.

1471 N. 1200 W. • Orem, Utah 84057

801-802-8992 • Fax 801-802-8993

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TIMPANOGOS HEIGHTS
CONDOMINIUM PROJECT
PLAT "A"
COMMON AREA

COMMENCING AT A MONUMENT MARKING THE EAST ¼ CORNER OF SECTION 24, T. 5 S., R. 1 E., S1B&M, UTAH COUNTY, UTAH; THENCE N. 00°24'13" W. ALONG THE SECTION LINE A DISTANCE OF 1410.42 FEET; THENCE WEST 1081.98 FEET TO THE REAL POINT OF BEGINNING, ALSO BEING THE SOUTHEAST CORNER OF PLAT "A" TIMPANOGOS HEIGHTS, A CONDOMINIUM PROJECT;

THENCE N. 70°10'48" W. A DISTANCE OF 435.43 FEET; THENCE ALONG A BLOCK WALL AND THE EXTENSION OF THE WALL THE FOLLOWING 3 COURSES: 1) N. 01°07'07" E. A DISTANCE OF 275.12 FEET; 2) THENCE S. 89°28'38" E. A DISTANCE OF 154.79 FEET; 3) THENCE N. 00°51'56" E. A DISTANCE OF 274.44 FEET; THENCE N. 89°52'23" E. A DISTANCE OF 252.85 FEET TO A FENCE LINE; THENCE S. 00°29'09" W. ALONG SAID FENCE LINE A DISTANCE OF 696.31 FEET TO THE REAL POINT OF BEGINNING.

LESS ALL PRIVATE AREA AND LIMITED COMMON AREA, AS SHOWN ON THE OFFICIAL PLAT OF SAID CONDOMINIUM PROJECT, ON FILE AT THE UTAH COUNTY RECORDER.

CONTAINING 3.53 ACRES OF LAND MORE OR LESS.

PREPARED BY:
HUBBLE ENGINEERING INC.



GARY W. WIER, L.S.

“Exhibit E”

Timpanogos Heights Town Homes

Homeowners Association

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Rules and Regulations

This set of rules is established as a basis for a successful Community and an enjoyable lifestyle. Town Home living is different from living in a typical neighborhood. Here in Timpanogos Heights, “common areas and facilities” are shared by the residents and, because of this sharing, community rules are not only worthwhile, they are a necessity.

These rules have been established under the authority of the Timpanogos Heights Declarations and Bylaws to insure the maximum use of the facilities for the benefit of the community as a whole. Exceptions will only be allowed in keeping with the spirit.

Owners must use the “lease language” provided by the Association when renting or leasing a unit. (Please contact the Property Management for a copy of the lease language). Owners will be held liable when renters or occupants are in violation of the rules governing the Association.

I. Unit Owners Responsibilities

A. NOISE

Excessive noise can be more disturbing to people than almost anything else. Therefore, residents are requested to locate sound equipment somewhere other than common or party walls, and to please use good judgment when playing record players, tape recorders, radios, or running cars, etc. When entertaining both outside and inside the home, the Utah County noise ordinance will be in force. Police will be called after 10 p.m. Noise that is excessive and continuous, regardless of the time of day, will be considered a nuisance.

B. DAMAGE

Because it would be unfair for all residents to pay for the damage of any common area or facility made by someone else, each homeowner is personally responsible for any damage made by him/her or his/her family, tenants, guests, or pets. Please report any damage to the Property Manager/Association Board as soon as possible.

C. SIDEWALKS, ENTRY WAYS AND COMMON AREAS

The sidewalks and entry ways, etc. are not to be obstructed or used for any other purpose other than pedestrian walkways. They are not play areas. No bicycles or scooters are allowed on the sidewalks or left in the common areas. Alcoholic beverages are not to be consumed in the entry ways or in common areas. Christmas lights and decorations will be allowed from December 1st to January 10th. Decorations for all other holidays will be allowed for a reasonable length of time. Please use good judgment. No permanent decorations of any kind will be allowed on the exterior of units as they detract from the continuity of the community. In short, residents are not to alter the exterior of any unit. All changes must be approved in writing by the Board of Trustees. **NO EXCEPTIONS!**

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D. STORAGE SHEDS

Storage sheds have been provided to you for your convenience and exclusive use, however, there are some uses that must be restricted: nothing may be stored which might increase the insurance liability of the Association. No gasoline or similarly volatile flammable materials may be stored. Management assumes no liability for loss or damage to articles stored inside units or left in the common areas. It is recommended to lock your individual storage shed.

E. TRASH

Everyone likes to live in a clean environment. All residents are requested to please be careful and pick up after the use of any common areas in the community. In addition, please do not sweep or throw anything out from inside the house or deck. Please bag all trash. Dispose of as much wet garbage in the kitchen disposal as possible. Boxes must be compressed and trash must be placed **inside** the trash receptacle. Large items are to be hauled to the city dump by individual owners and not left in the gated trash areas. Absolutely no trash or other items are to be left "next to" the trash receptacles.

A fine of \$100.00 per item will be assessed for items not in the dumpsters.

F. SAFETY

Because of our insurance liability, no owner or any member of the family or guest shall be allowed upon the roofs of the units, carports or any of the walls or fences.

G. PLUMBING

Because the homes are sharing common plumbing lines, owners will exercise caution and accept liability for items flushed down the drains. Each homeowner is personally liable for any damage done by water from broken pipes that freeze and burst due to inadequate heat inside any unit, whether occupied or vacant. Unit owners are responsible for maintaining adequate heat in vacant units during winter months.

H. PUBLIC SAFETY/ FIRE AND ENVIRONMENTAL CONCERNS

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No owner shall use or permit to be brought into the units, stored in the storage sheds or thrown in the trash dumpster, any flammable oils or fluids such as gasoline, kerosene, naphtha, benzine, or other explosives or articles deemed hazardous to life, limb or property including hazardous waster or toxic substances. No unit owner or tenant shall permit anything to be done or kept in his/her unit or storage unit, or on the common element that will result in the cancellation of insurance on the buildings or contents thereof or which would be a violation of any public law, ordinance or regulation. This includes fireworks of any type, or drug manufacturing materials and equipment.

If a resident of a unit is formally charged with a violation of local, state or federal law; and if, in the estimation of the Board of Trustees, the character and nature of the violation is such that the activity posed or continues to pose a physical threat to the safety and security of other residents or to private or common property in the complex; then the Board shall impose a fine of \$500 per violation to the owner of the unit, based on the reports from law enforcement and court records. This section does not change the procedures followed for other violations of the rules and does not limit the Board from pursuing other remedies legally available.

I. STRUCTURAL CHANGES TO INDIVIDUAL UNITS

There shall be no structural changes to the interior or exterior of any unit without prior written approval from the Property Manager and Association Board. In the Town Homes, most of the plumbing, cable TV, and electrical systems are shared. Before any construction alteration is begun, all contractors or persons involved must check with the Association Board to secure clearance.

J. SPECIAL PLANTING

The upkeep and appearance of the landscaping at Timpanogos Heights is a major expense and therefore, before planting any flowers, trees, shrubs, or special plants around your unit, you must first obtain permission from the Association Board. Every effort will be made to include owners in the

planning of landscaping and any input is appreciated. Remember a Town Home project is most attractive if uniformly landscaped.

K. MOVE IN/ MOVE OUT ENT 55573:2002 PG 54 of 60

All damage to the community caused by moving any article will be the liability of the homeowner causing the damage. Homeowners need to be present to meet movers and to provide access to the unit. Management employees and board members are not authorized to provide access to units for professional movers.

L. BUSINESS AT HOME

No business of any type may be operated from any unit. Town Home units may not be used as time-share Town Homes. Each homeowner is responsible to maintain the interior of his/her home including all appliances, fixtures etc., in such a manner that it will not detract from the value of all units and will not increase the Association insurance liability or cause harm or damage to persons or property.

M. COMMON AREA FEES AND SPECIAL SSESSMENTS

All community fees are due and payable on the first day of each month. These same fees are late on the 15th of each month and a late fee of 15% of the total amount will be assessed to the homeowner each month.

1. If the homeowner does not pay after 30 days, a reminder will be stamped on the owner's monthly statement and the owner's name and unit number will appear on the Delinquency list.
2. After 60 days, the owner will receive a letter from the property management company, requiring immediate payment and a warning of impending legal action. Late fees will continue to accrue.
3. After 90 days, or when outstanding fees total \$250 or more, the Timpanogos Heights Owner's Association, through its designated agent, will file a court claim against the owner to collect outstanding debts. The owner will be served by a Utah County Marshal and will be required to appear in court to respond to the claim.

All community fees, assessment fines or damage reimbursements are due and payable to Timpanogos Heights Town Homes. The Association Board reserves the right to restrict the use of the common areas and amenities, including parking stalls, to only those unit owners, their tenants, and invited guests, who are current in payment of common areas fees, and are in compliance with the by-laws and rules established for the management of Timpanogos Heights.

N. RULES AND REGULATION CHANGES

These rules have been adopted by the Association Board for the protection and privacy of each homeowner. They may be altered as the need arises. Each homeowner will be given written notification of any changes in the Rules and Regulations.

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Each homeowner is encouraged to make suggestions to the Property Manager/Association Board for sensible and practical improvements to the community.

O. VIOLATION FINES

Any violation or infraction of the rules and regulations will result in the following action:

- 1st offense: Written warning
- 2nd offense: \$100.00 Fine
- 3rd offense: \$250.00 Fine
- 4th offense: \$250.00 and Legal action will be taken.

All violation fines will be collected as outlined in the Declaration of Covenants.

P. SPEED LIMIT

The speed limit for all parking areas is 5 mph. Any homeowner or guest seen speeding in the parking areas will be notified and then fined according to Section "O" of these rules.

II. Common Areas

A. Homeowner Responsibilities

The common area must be cleaned completely after use. This means sweeping, garbage removal, taking account of anything that might have been broken and general overall clean up of the common areas used. Any damage to the buildings or their contents will be assessed to the resident.

All functions must end and any clean up completed by 10:00 p.m.

(Parties are to end in time to have all clean up completed by 10:00 p.m.)

The resident is responsible for the conduct of any guests and will be held personally liable for any damages caused by any guest.

B. Playground rules:

1. All children under 10 years of age shall be supervised by an adult at all times while playing on the playground or in the common areas.
2. The playground closes at 10:00 p.m.

The Association Board reserves the right to restrict the use of the common areas and amenities, including covered and uncovered parking stalls, by unit owners, their tenants, and invited guests, who are not current in payment of condo fees, and are not in compliance with the by-laws and rules established for the management of the Association.

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III. Pets

A. RULES

1. All pets must be approved by, and registered with the Association Board/ Property Manager prior to bringing the pet to Timpanogos Heights Town Homes. Applications are available from the Property Manager.
2. No more than two dogs or cats will be allowed per home. Dogs allowed may not weigh more than fifteen pounds.
3. All pets are to be on a leash when outside the units.
4. Each pet owner, at all times will pick up the droppings of his/ her pets **immediately** and dispose of them properly.
5. Pet owners will not permit pets to bark or make other noises that will disturb other residents.
6. Pets are not to be tied to porches, trees, or shrubs. Dog houses will not be allowed on front porches either on a temporary or permanent basis.

B. VIOLATION PROCEDURES

Pet owners are fully responsible for personal injuries and /or property damage caused by their pets. In addition to ensure compliance with all pet rules, the following procedure will apply in handling pet offenses. All complaints must be in writing and signed by the owner placing the complaint in order to be legally enforced. The Property Manager will then act upon all written complaints when received by the manager, in the following manner:

1st offense: A written notice will be delivered to the pet owner in violation.

2nd offense: A \$100.00 service charge will be assessed to both the resident and owner of the unit if they are not one and the same.

3rd and subsequent offense: A \$250.00 service charge will be assessed to both the resident and owner of the unit if they are not one and the same. Pet owners may appeal any complaint or service charge by submitting in writing a request for a hearing on the matter to the Association Board/ Property Manager within five (5) days of the receipt of a complaint or service charge. They may also personally contact the Property Manager/ Association Board.

When Management time is involved in the removal of unauthorized pets, the unit owner and tenant (when applicable) shall be assessed **NT 55573:2002** PG 57 of 60

1. A \$100.00 fee for the preparation of the first demand letter from the Property Management.
2. A \$250.00 fee for the preparation of a demand letter from the Association attorney.
3. A minimum charge of \$1,000.00 for attorney's fees and court costs should a lawsuit be commenced to enjoin the unauthorized use of the premises.

IV Parking

In order to provide adequate access to all of the units and common areas of Timpanogos Heights Town Homes, the curbs and parking areas that constitute fire lanes and access areas have been painted red, and/ or marked with "No Parking" signs. These areas include the spaces in front of dumpsters. Because of the limited space available to some residents, cooperation in using the covered parking for motor vehicle parking will be necessary to ensure adequate parking in the common parking lots. Each owner receives one reserved covered parking place and one first come first serve uncovered parking place.

A. RULES

1. Unit owners, residents, and /or their invited guests who park any vehicle in any unauthorized space will have the vehicle towed away at the owner's expense.
2. Use of the common areas for repair and/or service work, including oil changes, is strictly prohibited.
3. No motor vehicle, including motorcycles, motorbikes, go-carts, etc., will be operated, driven or parked on the sidewalks of any other common area.
4. All vehicles, of any kind, parked in the common area must have current license plates and registration and be in operating condition. Vehicles parked in violation of this regulation will be towed away at the owner's expense after receiving one written notice of the parking violation.
5. Recreational vehicles may only be parked in the uncovered lots for a loading/unloading period not to exceed 24 hours. This includes, trailers, U-hauls, and oversized semi-trucks etc.
6. Timpanogos Heights is not a trailer park or campground. No recreational vehicle, motor vehicle, or camper shall be inhabited while parked in the common area.
7. Storage of vehicles is not permitted in any common area facility. All vehicles in unassigned parking spaces must

be moved every 7 days or prior arrangements must be made with the Association Board.

- 8. All vehicles must be parked between painted lines.
Vehicles may not take up more than one parking space.
Please do not encroach on the parking stall next to yours

B. VIOLATION PROCEDURES

The following procedures will apply to the Association Board/Property Manager in the enforcement of the parking rules of Timpanogos Heights Town Homes.

Before towing any vehicle for any reason other than emergency or location of vehicle in a red zone, the following will occur:

- 1st offense: A written notice will be posted on the vehicle.
- 2nd offense: The vehicle will be towed at the owner's expense.

Vehicles parked in assigned covered parking may be towed by the owner without written notice.

In addition, a service charge, for management time may be assessed using the following manner:

- 1st offense: A written warning posted on the vehicle
- 2nd offense: A \$50.00 service charge will be assessed to the owner and, when applicable, tenant of the unit.
- 3rd offense: \$100.00 service charge will be assessed to the owner and, when applicable, tenant of the unit.

Furthermore, a late fee of 15% per month will be assessed on all unpaid fines of assessments. If fines and assessments remain unpaid after 30 days, Property Management/Association Board will take legal action.

Owners may appeal any complaint or service charge involving parking violations, by submitting in writing a request for a hearing to the Property Manager/ Association Board reserves the right to restrict the use of the parking stalls both covered and uncovered, assigned or not. Owners who are not current in payment of condo fees will receive written notice that their vehicles will not be allowed to be parked on the premises in **any** stall until their accounts are brought current. Violation of this regulation will result in the previously outlined violation procedures.

WHEN RECORDED, MAIL TO:
BACH BUILDERS, INC.
2785 WEST 9000 SOUTH
WEST JORDAN, UTAH 84088

NOTICE OF COMMENCEMENT OF PROJECT

1. NAME AND ADDRESS OF OWNER:
Timpanogos Heights L.L.C.
2785 West 9000 South, West Jordan, Utah 84088

2. NAME AND ADDRESS OF GENERAL (ORIGINAL) CONTRACTOR
Bach Builders, Inc.
2785 West 9000 South, West Jordan, Utah 84088

3. SURETY PROVIDING BOND
None required by owner
Bond No. _____ Amount of Bond: _____

4. PROJECT NAME AND ADDRESS
Timpanogos Heights L.L.C.
52 South 750 East, American Fork, Utah

5. LEGAL DESCRIPTION *See legal description attached hereto

DATED this 14th day of May, 2002.

BACH BUILDERS, INC.

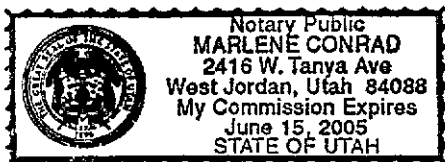
By: _____

Its: Manager

Authorized Agent for original contractor

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

SUBSCRIBED, SWORN TO AND AKNOWLEDGED before me this 14th
day of May, 2002.



Marlene Conrad
NOTARY PUBLIC

Residing at: West Jordan

My Commission Expires: 6-15-05

WHEN RECORDED MAIL TO:

7785 W. 9000 S.
West Jordan, UT 84088

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RANDALL A COVINGTON
UTAH COUNTY RECORDER
2001 JUN 05 12:53 PM FEE 10.00 BY AB
RECORDED FOR MERIDIAN TITLE

MTC No. 78257-CA-*accou*

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WARRANTY DEED

TIMPANOGAS HEIGHTS, L.L.C., A UTAH LIMITED LIABILITY COMPANY,
Grantor(s) of American Fork, County of UTAH, State of Utah, for
and in consideration of TEN DOLLARS (\$10.00) and other good and
valuable consideration, hereby CONVEY (S) and WARRANT (S) to

TIMPANOGAS HEIGHTS HOMEOWNERS ASSOCIATION

as Grantee(s), the following described real property situated in
County of UTAH, State of Utah, to wit:

COMMENCING AT A MONUMENT MARKING THE EAST 1/4 CORNER OF SECTION
24, T. 5S, R.1 E, SLB&M, UTAH COUNTY, UTAH; THENCE N. 00 DEGREES
24'13" W. ALONG THE SECTION LINE A DISTANCE OF 1410.42 FEET;
THENCE WEST 1081.98 FEET TO THE REAL POINT OF BEGINNING. ALSO
BEING THE SOUTHEAST CORNER OF PLAT "A" TIMPANOGAS HEIGHTS, A
CONDOMINIUM PROJECT;

THENCE N. 70 DEGREES 10'48" W. A DISTANCE OF 435.43 FEET; THENCE
ALONG A BLOCK WALL AND THE EXTENSION OF THE WALL THE FOLLOWING 3
COURSES; 1) N. 01 DEGREES 07'07" E. A DISTANCE OF 275.12 FEET; 2)
THENCE S. 89 DEGREES 28'38" E. A DISTANCE OF 154.79 FEET; 3)
THENCE N. 00 DEGREES 31'56" E. A DISTANCE OF 274.44 FEET; THENCE
N. 89 DEGREES 52'23" E. A DISTANCE OF 252.85 FEET TO A FENCE LINE;
THENCE S. 00 DEGREES 29'09" W. ALONG SAID FENCE LINE A DISTANCE OF
696.31 FEET TO THE REAL POINT OF BEGINNING.

LESS ALL PRIVATE AREA AND LIMITED COMMON AREA, AS SHOWN ON THE
OFFICIAL PLAT OF SAID CONDOMINIUM PROJECT, ON FILE AT THE UTAH
COUNTY RECORDER.

CONTAINING 3.53 ACRES OF LAND MORE OR LESS.

Parcel No. 13-058-0147

Subject to current general taxes, easements, restrictions,
reservations and right-of-ways appearing of record.

In witness whereof, the grantor has hereby affixed his/her hand and
seal this 6th day of JUNE, 2001.

Dale J. Rindalch
TIMPANOGAS HEIGHTS L.L.C.

STATE OF UTAH)
) ;SS
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ___ day of
JUNE, 2001, by TIMPANOGAS HEIGHTS, L.L.C., A UTAH LIMITED LIABILITY
COMPANY, who duly acknowledged to me that the foregoing was executed
by authority.

Marlene Conrad
Notary Public

