


After Recording Return To:  
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ENT 39985:2012 PG 1 of 5  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2012 May 14 1:14 pm FEE 70.00 BY EO  
RECORDED FOR TOSCANA AT HIGHLAND

**AMENDMENT TO AMENDED AND RESTATED MASTER  
DECLARATION OF  
PROTECTIVE COVENANTS, CONDITIONS & RESTRICTIONS  
FOR TOSCANA AT HIGHLAND**

**(AN EXPANDABLE TOWNHOME RESIDENTIAL PROJECT)**

This Amendment to the Amended and Restated Master Declaration of Protective Covenants, Conditions, & Restrictions for Toscana at Highland, an Expandable Townhome Residential Project (the "Amendment") is made this 14<sup>th</sup> day of May, 2012 by TOSCANA AT HIGHLAND, LLC (the "Declarant").

RECITALS

A. The Association is governed by the Amended and Restated Master Declaration of Protective Covenants, Conditions, & Restrictions for Toscana at Highland, recorded as Entry No. 50360:2010, on June 17, 2010 in the Office of the Utah County Recorder, State of Utah, (the "Amended Declaration") which amended that certain Master Declaration of Protective Covenants Conditions and Restrictions for Toscana at Highland on March 9, 2010, as Entry No. 19537:2010, in the Office of the Utah Count Recorder (the "Original Declaration");

B. This Amendment shall amend provisions of the Amended Declaration as noted below and shall apply to and be binding against all of the Property of the Project and any Additional Property, annexation, expansion or supplement thereto;

C. This Amendment is subject to the Definitions of the Amended Declaration at Article I, unless otherwise defined herein.

D. This Amendment is intended to: permit Owners to conduct or permit approved commercial businesses and work in limited areas.

E. Pursuant to the Amended Declaration, the necessary approvals to amend the Amended Declaration were duly conducted and received to adopt and record this amendment.

**NOW, THEREFORE**, the Declarant hereby amends the Amended Declaration at Article V Section 5.1 as follows:

5.1 Permitted Use. No Lot shall be used except for residential townhome purposes and commercial purposes permitted subject to Article V, Section 5.10, as amended in this Amendment. All buildings must comply with the Design Guidelines.

**NOW, THEREFORE**, the Declarant also hereby amends the Amended Declaration at Article V, Section 5.10 as follows:

5.10 Commercial Business. Commercial Business shall be permitted within the Project on Lots which are zoned for such, but such Commercial Businesses are subject to City ordinances, Utah law, and approval by the Declarant or, after the Turnover Date, the Board. Commercial Business shall also be subject to the Amended Declaration and subsequent amendments, including this Amendment unless excluded by the Declarant or, after the Turnover Date, the Board.

**NOW, THEREFORE**,

18.15 Leases. Notwithstanding anything to the contrary contained in the Declaration, the leasing of any Lot within the Property shall be governed by this Section. "Lease" or "rent" shall mean allowing another the right to occupy the Lot in exchange for something of value, both monetary and non-monetary consideration. The Association may charge a fee to the owner to reimburse the Association for the added costs and expenses associated with administering rentals. The fee shall be set by rule and shall be collectible in the same manner as assessments.

- (a) Occupancy Requirement. Owners or Lots shall be subject to the following restrictions:
- i. No owner may lease or rent less than the entire Lot without Board approval (no individual room rentals) and no owner may lease or rent any Lot for a period of less than twelve (12) consecutive months.
  - ii. No Lot may be rented or leased if the rental or lease results in more than thirty percent (30%) of the Lots ("Rental-Lease Limit") being rented or leased at the same time (including Grandfathered Lots).
- (b) Application and Approval. Prior to renting or leasing any Lot, an Owner shall apply to the Board for approval. The Board shall review the application and make a determination of whether the Owner has performed the necessary tenant screening, and that the rental or lease will not exceed the Rental-Lease Limit, or violate the Occupancy Requirement. Satisfactory tenant screening shall consist of a criminal background check showing no felony convictions. Owners shall be responsible for all costs associated with tenant screening. The Board shall:

- i. Approve the application if it determines that the rental or lease will not exceed the Rental-Lease Limit and Occupancy Requirement and the Owner provides satisfactory proof of tenant screening; or
  - ii. Deny the application if it determines that the rental or lease of the Lot will exceed the Rental-Lease Limit, the Owner has not complied with the Occupancy Requirement, or the Owner has not performed satisfactory tenant screening.
- (c) Hardship Exemption. In an effort to avoid undue hardships or practical difficulties such as the owner's job relocation, disability, military deployment, charitable service, estate sales and disputes or other similar circumstances, the Board shall have sole discretion to approve or disapprove an owner's application to temporarily rent or lease the owner's Lot. "Temporarily" shall be defined by Board resolution.
- (d) Multiple Lot Ownership. An owner is not eligible to rent more than one Lot until the pending applications of:
  - i. All owners who are not currently renting or leasing a Lot have been approved;
  - ii. All owners who are currently renting or leasing fewer Lots than the applicant have been approved.
- (e) Review of Rental Applications. Applications from an owner for permission to rent or lease shall be reviewed and approved or denied by the Board pursuant to the following:
  - i. The Board shall review applications for permission to rent or lease in chronological order based upon the date of receipt of the application. Within ten (10) business days of receipt, the Board shall approve or deny an application. If the Board fails to approve or deny an application within the ten (10) days timeframe, it shall be deemed denied.
  - ii. If an owner's application is denied, the applicant may be placed on a waiting list according to the date the application was received so that the owner whose application was earliest received will have the first opportunity to rent or lease.
- (f) Application Form; Approval Process; Waiting List. An application form, the application and approval process, a waiting list, and any other rules deemed necessary by the Board to implement a rental restriction shall be established by rules adopted by resolution of the Board consistent with any adopted rental restriction amendments, if any.
- (g) Approved Lease Agreement. All Owners shall use and provide the Board with a copy of a written lease agreement which shall be kept on

file with the books and records of the Association so that the Association may determine the number of Lots rented or leased. The lease agreements shall subject the tenants or renters to each and every provision of the Declaration and the rules and regulations of the Association. Said lease agreement shall also provide that any failure by the lessee thereunder to comply with the terms of the Declaration and the rules and regulations of the Association shall be a default under the lease.

- (h) Violations of Rental Restrictions. If an Owner fails to submit the required application, fails to use and submit a copy of a written lease agreement for each tenant, and rents or leases any Lot, and/or rents or leases any Lot after the Board has denied the owner's application, the Board may assess fines against the owner and the owner's Lot in an amount to be determined by the Board pursuant to a schedule of fines adopted in accordance with Utah law. In addition, regardless of whether any fines have been imposed, the Board may proceed with any other available legal remedies, including but not limited to, an action to terminate the rental or lease agreement and removal of any tenant or lessee by the Association being deemed an intended third-party beneficiary to any rental or lease agreement, regardless if mentioned in the lease.
- (i) Recovery of Costs and Attorney Fees. The Association shall be entitled to recover from the offending Owner its costs and attorney's fees incurred for enforcement of any rental restriction amendments that are adopted by the Members of the Association, regardless of whether any lawsuit or other action is commenced.
- (j) Grandfather Clause. As of the date of recording of this amendment, any owner that is currently renting or leasing a Lot ("Grandfathered Owner") may continue to rent or lease their Lot until such time as the Lot is sold or title is otherwise transferred to a new owner of record. Title shall have transferred if more than 75% membership interest in a limited liability company or 75% of the shares in a corporation has been sold within a consecutive twelve (12) month period. However, notwithstanding the grandfather provision above, a Grandfathered Owner shall use and submit written lease agreements beginning at the commencement of the next lease term after the date of this amendment. Rental of individual rooms or Owners with roommates shall not be Grandfathered Owners.
- (k) Termination of Lease or Rental Agreement for Violations. In addition to any other remedies available to the Association, the Board may require the owner to terminate a lease or rental agreement if the Board determines that any lessee or tenant has violated any provision of this

Declaration, the Articles of Incorporation, the Bylaws, or any amendments thereto, or the Rules and Regulations adopted thereto.

IN WITNESS WHEREOF, THE ASSOCIATION has executed this Amendment to the Amended Declaration as of the 14<sup>th</sup> day of May, 2012 in accordance with the Amended Declaration.

**DECLARANT, TOSCANA AT HIGHLAND LLC**

Jeremy Benjamin Johnson  
President or Vice President  
Counsel on behalf of President/Declarant

STATE OF UTAH                    )  
  :SS  
County of Utah                    )

On this 14 day of May 2012, personally appeared before me Jeremy Benjamin Johnson who is known to me or who presented satisfactory identification, and has, while in my presence and while under oath or affirmation, voluntarily signed this document.

Patrick A. Golladay  
Notary Public

