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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR THE PARK VILLAGE**

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this "Declaration") is executed by GARDNER BTS PARK VILLAGE, LLC ("Declarant"), a Utah limited liability company, and made effective this \_\_\_\_ day of July, 2007.

**RECITALS**

A. Declarant is the record title holder of certain real property located in CLEARFIELD City, Davis County, Utah, as more particularly described on Exhibit A attached hereto (the "Development Area").

B. Some or all of the Development Area is being developed as residential lots (the "Premises"), as more particularly described on Exhibit B attached hereto as part of a phased residential development (the "Development" or "Community") by the Declarant.

C. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners of the Premises, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth in this Declaration which shall run with and be a burden upon the Premises.

D. Declarant intends that the Owners and all other persons hereafter acquiring any right, title or interest in the Premises, in whole or in part, shall at all times enjoy the benefits of, and shall hold their interest subject to, this Declaration, which is recorded in furtherance of establishing a general plan of ownership and development for the Premises; and for establishing rules for the use, occupancy, management, and enjoyment thereof all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Premises and the quality of life therein.

NOW, THEREFORE, Declarant, as owner of the Premises for the purposes above set forth, declares as follows:

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
07/17/2007 01:35 PM  
FEE \$130.00 Pgs: 44  
DEP RT REC'D FOR CLEARFIELD CITY

**ARTICLE ONE**

**Definitions**

Certain words and terms used in this Declaration are defined as follows:

1.01 **BUILDING:** A structure built on a lot located within the Premises including the structural components thereof.

1.02 **BY-LAWS:** The By-Laws of the Community Association.

1.03 **CHARGES:** The Community Assessment, Special Service Fees, any special assessment levied by the Community Association and/or any other charges or amounts which an Owner is required to pay or for which an Owner is liable under this Declaration or the By-Laws.

1.04 **COMMON AREA:** Those portions of the Premises which are described and designated as "Common Area" in Exhibit C hereto, as Exhibit C, may be amended or supplemented

from time to time, together with all improvements located above and below the ground and rights appurtenant thereto. The Common Area shall generally include open space, detention areas, green areas, streets, parks and recreational areas maintained by the Community Association and shall not include any Units. The Common Area shall not include any water mains or sanitary sewers or other improvements that have been dedicated to the Municipality. The Common Area may be on a separate subdivided lot or outlot. The Declarant may from time to time make additional portions of the Development Area subject to this Declaration as "Added Common Area" pursuant to Article Nine.

1.05 COMMUNITY ASSESSMENT: The amounts which the Community Association shall assess and collect from the Owners to pay the Community Expenses and accumulate reserves for such expenses, as more fully described in Article Seven.

1.06 COMMUNITY ASSOCIATION: The Park Village Community Association, a Utah not-for-profit corporation, its successors and assigns.

1.07 COMMUNITY ASSOCIATION BOARD: The board of directors of the Community Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article Six.

1.08 COMMUNITY EXPENSES: The expenses of administration (including management and professional services), operation, maintenance, repair, replacement, and landscaping of the Common Area; the cost of insurance, water, electricity, telephone and other necessary utility expenses for the Common Area; the cost of snow removal and street maintenance within the Premises; the cost of general and special real estate taxes and assessments levied or assessed against any portion of the Common Area owned by the Community Association; the cost of, and the expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Community Association in connection with the operation of the Common Area; the cost of maintenance of the landscaping of parkways or roads on those portions of dedicated rights of way which are adjacent to the Premises; any expenses associated with the maintenance and repair of private roads and utilities financed by the Capital Improvement Road Fund (see Section 3.19), any expense associated with maintaining fire and all risk coverage insurance, public liability insurance, and any other insurance deemed advisable by the Community Association; any expenses designated as Community Expenses by this Declaration; and any other expenses lawfully incurred by the Community Association for the common benefit of all of the Owners.

1.09 COST SHARING AGREEMENT: An Agreement entered into between, or on behalf of, the Community Association and the owner of real estate which is located adjacent to, or in the vicinity of, the Premises whereby the Community Association and the owner of such other property agree to share certain costs of maintenance.

1.10 COUNTY: Davis County, Utah, or any successor thereto.

1.11 DECLARANT: Gardner BTS Park Village, LLC, a Utah limited liability company, its successors and assigns.

1.12 DECLARATION: This instrument with all Exhibits hereto, as amended or supplemented from time to time.

1.13 DWELLING UNIT: A single family home constructed on a Unit.

1.14 DEVELOPMENT AREA: The real estate described in Exhibit A hereto with all improvements thereon and rights appurtenant thereto. Any portions of the Development Area which are not part of the Premises may be developed and used for any purposes not prohibited by law, including, without limitation, as a residential development which is administered separate from the Development.

1.15 DWELLING UNIT: A portion of the Premises that is described and designated as a Unit in Exhibit C or as provided for in Exhibit C and with respect to which a temporary, conditional or permanent certificate of occupancy has been issued by the Municipality for residential living purposes. A Dwelling Unit will be a single family residence used for residential living purposes. If two or more Dwelling Units are later combined, each Dwelling Unit shall nevertheless be considered as a separate Dwelling Unit under this Declaration.

1.16 FIRST MORTGAGE: A bona fide first security deed, first mortgage, first trust deed or equivalent security interest covering a Dwelling Unit.

1.17 FIRST MORTGAGEE: The holder of a First Mortgage.

1.18 INDEX RATIO: For purposes hereof (i) The "Index" shall be the level of the most recently published Consumer Price Index - United States City Average - All Items (1982-84 100) as published from time to time by the Bureau of Labor Statistics or if the Index shall cease being published, such other index or standard designated by the Declarant, in its discretion, as shall most nearly approximate the measurements theretofore made by the Index shall be used as the Index hereunder and the Index Base Level (hereinafter defined) shall be adjusted accordingly; (ii) the "Index Base Level" shall be 180; and (iii) the "Index Ratio" shall be a fraction, the numerator of which shall be the most recently published level of the Index and the denominator of which shall be the Index Base Level.

1.19 COMMON AREA ASSESSMENT: The amounts which the Community Association shall assess and collect from the Owners of Units which have the right to use a particular Common Area to pay the Common Area Expenses for the Common Area and to accumulate Reserves for such expenses as more fully described in Section 7.02.

1.20 COMMON AREA EXPENSES: With respect to a particular Common Area, the expenses of administration (including management, security, and professional services), maintenance, operation, repair, and replacement of a particular Common Area; the cost of insurance, real estate taxes and other assessments, if any, water, waste removal, electricity, telephone and other necessary utility expenses for the Common Area; the cost of snow removal and driveway maintenance; the cost of and the expenses incurred for the maintenance, repair and replacement of personal property used by the Community Association only in connection with the

operation of the Common Area; any expense designated as a Common Area Expense by this Declaration or any Exhibit hereto, as supplemented or amended from time to time; and any expenses incurred by the Community Association which, pursuant to generally accepted accounting principles, can reasonably be allocated to the Common Area. Common Area Expenses shall not be deemed to be, and shall not be deemed to include, Community Expenses. In the event that certain expenses are incurred by the Community Association in connection with the operation of a particular Common Area and another Common Area and/or the Common Area, the allocation of expenses between the various Common Area Expenses and the Community Expenses shall be made by the Community Association Board based on generally accepted accounting principles, and any allocation so made shall be final and binding.

1.21 MATERIAL STANDARDS: Design and development standards that ensure the extensive use of quality, durable materials such as brick, stone, or paintable siding on Units and prohibit certain undesirable or less durable materials such as vinyl siding.

1.22 MUNICIPALITY: The City of Clearfield, Utah or any successor thereto.

1.23 OWNER: A Record owner, whether one or more persons, of fee simple title to a Unit, including a contract seller, but excluding those having such interest merely as security for the performance of an obligation. The Declarant shall be deemed to be an Owner with respect to each Unit owned by the Declarant.

1.24 PERSON: A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.25 PREMISES: That portion of the Development Area which is described in Exhibit B hereto as the Premises, as Exhibit B may be amended from time to time, with all improvements thereon and rights appurtenant thereto. The Declarant may make additional portions of the Development Area part of the Premises as provided in Article Nine.

1.26 RECORD: To record in the Office of the Recorder of Deeds for the County.

1.27 RESIDENT: An individual who legally resides in a Unit.

1.28 SITE PLAN: The Site Plan attached hereto as Exhibit C, as amended from time to time. The Site Plan shall show the Premises, the Common Area and Common Area.

1.29 TURNOVER DATE: The date on which any one of the following shall first occur:

(a) Within sixty (60) days from the date on which Seventy-five percent (75%) of the Units are conveyed to bona fide purchasers for value;

(b) The expiration of twelve (12) years from the date of Recording hereof; or

(c) The date designated in written notice from the Declarant to each of the Owners as being the Turnover Date.

1.30 UNIT: A subdivided lot within the Development depicted as a separately identified parcel on a recorded subdivision plat or survey, which may be independently owned and conveyed and is zoned or otherwise intended for development, use and occupancy as a Dwelling Unit. A parcel of land is considered a single Unit until a subdivision plat or survey instrument is recorded subdividing it into more than one Unit. The term "Unit" shall also include the land, if any, which is part of a Unit. The term "Unit" does not include any Common Area or other land owned by the Community Association.

1.31 VOTING MEMBER: The individuals authorized to exercise the vote of a Class A Members or the Class B Member.

## **ARTICLE TWO**

### **Scope of Declaration**

2.01 PROPERTY SUBJECT TO DECLARATION: Declarant, as the owner of fee simple title to the Premises, expressly intends to, and by Recording this Declaration, does hereby subject the Premises to the provisions of this Declaration. The Declarant reserves the right (but shall not be obligated) to add portions of the Development Area to the Premises from time to time as more fully provided in Article Nine hereof.

2.02 CONVEYANCES SUBJECT TO DECLARATION: All covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to and running with the land and shall at all times inure to the benefit of and be binding upon any Person having at any time any interest or estate in any part of the Premises. Any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation or other instrument relating to or affecting a portion of the Premises, shall be subject to all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved, or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document, whether or not a specific reference is made in such document to this Declaration.

2.03 DURATION. Except as otherwise specifically provided herein, the covenants, conditions, restrictions, easements, reservations, liens and charges which are granted, created, reserved or declared by this Declaration shall be appurtenant to and shall run with and bind the land in perpetuity unless revoked, changed or amended in whole or in part by a Recorded instrument executed by Owners of not less than seventy-five percent (75%) of the Units.

## **ARTICLE THREE**

### Use and Maintenance of Premises

3.01 **COMMON AREA OWNERSHIP:** Any portion of the Premises which (i) is designated as being part of the Common Area and (ii) consists of a separate subdivided lot or outlot shall be conveyed to the Community Association within ninety (90) days after it is made subject to this Declaration or the Turnover Date, whichever occurs later. Any Common Area which is conveyed to the Community Association shall be free and clear of any mortgage or trust deed whatsoever at the time of such conveyance. Any Common Area owned by the Community Association shall not be mortgaged or conveyed by the Community Association without the consent of at least two-thirds of the Owners of Units (other than Declarant) in case of a Common Area or at least two-thirds (2/3) of the Owners of Units (other than Declarant) with use rights to a Common Area.

3.02 **ACCESS EASEMENT:** Each Owner shall have a non-exclusive perpetual easement for ingress to and egress from his Unit to public streets and roads over and across all walkways, private roads and driveways, if any, located on (i) the Common Area, which easement shall run with the land, be appurtenant to and pass with the title to every Unit. The County and the Municipality or any municipality or other governmental authority which has jurisdiction over the Premises shall have a non-exclusive easement of access over the Common Areas for police, fire, ambulance, waste removal and other vehicles for the purpose of furnishing municipal or emergency services to the Development Area. The Community Association, its employees, agents and contractors, shall have the right of ingress to, egress from and parking on the Common Area and the right to store equipment on the Common Area for the purposes of furnishing maintenance, repairs or replacements of the Common Area as required or permitted hereunder. Each owner of a portion of the Development Area not yet subject to this Declaration as part of the Premises shall have a non-exclusive easement of access over and across walkways, private roads and driveways on the Premises.

3.03 **RIGHT OF ENJOYMENT:** Each Owner shall have the non-exclusive right and easement to use and enjoy the Common Area. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Unit, subject to and governed by the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Community Association Board.

3.04 **DELEGATION OF USE:** Subject to the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Community Association Board, any Owner of a Unit may delegate his right to use and enjoy the Common Area, to Residents of his Unit including, but not limited to, tenants and contract purchasers of the Unit who are Residents and to contractors, subcontractors, guests and other invitees of the Owner or Residents on a temporary basis. An Owner who is not a Resident of his Unit may only use and enjoy these areas pursuant to rules and regulations adopted by the Community Association Board.

3.05 **RULES AND REGULATIONS REGARDING USE AND FUTURE RIGHTS AND EASEMENTS:** The general use and enjoyment of the Common Area shall consistent with the subsequent provisions of this Section 3.05, at all times be subject to reasonable rules and regulations duly adopted by the Community Association Board with respect to Common Area.

Unless otherwise provided or delegated, the Community Association Board shall control the permissible uses of the Common Area. Permissible uses of the Common Area shall, at a minimum, include the following: picnics, holiday parties, seasonal religious displays, gatherings to address community related issues, informal sporting events, organized youth activities (such as Boy & Girl Scouts), neighborhood musical concerts, religious meetings and worship services, neighborhood "block parties", and Community Association or other Owner meetings. The authorized use of the Common Area for religious displays, meetings, or worship services shall not be construed as an establishment or endorsement of any particular religion, nor does such use give rise to rights of comparable nonreligious activities by other persons or groups. Notwithstanding anything to the contrary in this Declaration, Declarant or the Community Association Board if occurring after the Turnover Date, may, to or for the benefit of one or more third parties (including, without limitation, a not-for-profit foundation or any other entity or person with expertise or involvement in such matters) (a) delegate all or part of the authority to define or conduct such permissible uses, or (b) create valid and enforceable easements or rights for such purposes in or with respect to the Common Area, subject to such terms as the Declarant (or, if appropriate, the Community Association Board) deems appropriate in its discretion. Notwithstanding the foregoing, any entity which is permitted to use the Common Area shall be required to restore any property used to the condition it was in prior to such use, ordinary wear and tear excepted, and/or pay to the Community Association a fee which approximates the costs or expenses incurred by the Community Association as a result of such use.

### 3.06 MAINTENANCE, REPAIR AND REPLACEMENT:

(a) Except as otherwise provided in this Declaration, maintenance, repairs and replacements of the Common Area shall be furnished by the Community Association in accordance with the provisions of this Declaration and applicable requirements of the Municipality, and shall include, without limitation, the following:

(i) The maintenance (including street cleaning), repair and replacement of the private roads, driveways, walks, paths, parking areas, access facilities, utilities and of all other improvements on and through the Common Area of which some of the financing for such improvements and maintenance shall come from the Capital Improvement Road Fund; and

(ii) Added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping on the Common Area subject to applicable requirements of the Municipality and/or other governmental entities, if any.

Except as hereinafter provided in this Section, the costs of maintenance, repairs and replacement of the Common Area shall be Community Expenses.

(b) In the event that any of the improvements to the Common Area are damaged, then unless a resolution to the contrary is adopted within ninety (90) days after the date of the damage by the affirmative vote of at least 75% of the votes of all Voting Members, the damaged improvements shall be restored to their condition before such damage occurred. Any insurance proceeds from insurance policies covering the damage shall be used first to pay the cost thereof, and any excess insurance proceeds shall be used to pay the Community Expenses, as applicable. If

the cost to repair a damaged improvement is in excess of available insurance proceeds, the difference shall be paid from applicable Reserves, or as a Community Expense, as applicable.

(c) Each Owner of a Dwelling Unit shall be responsible for maintaining those portions of the Owner's Dwelling Unit.

(d) The Community Association may, from time to time, enter into Cost Sharing Agreements under which the Community Association agrees to furnish maintenance to areas that it is not specifically required to maintain hereunder where the other party to the Cost Sharing Agreement is obligated to pay to the Community Association a share of or all of the costs of such maintenance.

3.07 DAMAGE BY OWNER, TENANT OR RESIDENT: If, due to the act or omission of an Owner, Resident, or Tenant of a Unit or of a household pet of any of the same, damage shall be caused to the Common Area and maintenance, repairs or replacements shall be required thereby, which would otherwise be a Community Expense then the Owner of the Unit shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Community Association Board, to the extent not covered by insurance carried by the Community Association.

3.08 ALTERATIONS, ADDITIONS OR IMPROVEMENTS: Alterations, additions or improvements to the Common Area may be made only pursuant to action of the Community Association Board approving such alterations, additions, or improvements. The cost of any such alterations, additions or improvements to Common Area shall be charged to all Owners of Units in equal amounts for each Unit. However, any proposed alteration, addition or improvement to the Common Area which would result in a charge to a Unit of more than Two Hundred Dollars (\$200.00) multiplied by the Index Ratio, shall not be authorized unless such proposed alteration, addition or improvement and the cost thereof is approved by the affirmative vote of at least two thirds (2/3) of the votes cast by Voting Members who represent the Units which would be assessed to pay the cost of the proposed alteration, addition or improvement at a duly called meeting of the Community Association members. The cost of an alteration, addition or improvement made pursuant to this Section shall be paid either from Reserves or by way of a special assessment, all as more fully provided in Article Seven hereof.

3.09 EASEMENTS LEASES, LICENSES, AND CONCESSIONS AND RIGHTS: The Community Association Board (or, prior to the Turnover Date, the Declarant) shall have the right and power from time to time (a) to lease or grant easements, licenses, concessions or other rights with regard to any portions or all of the Common Area for such uses and purposes as the Community Association Board (or the Declarant, as appropriate) deems to be in the best interests of the Owners including, without limitation, the right to grant easements relating to installation and operation of utilities, communication systems, satellite or cable television systems, the activities described in Section 3.05 above and similar and related purposes, and/or (b) with the agreement of the beneficiary or grantee of the easement, cancel, alter or modify any easement which affects any Common Area and which does not benefit an Owner, as the Community Association Board (or the Declarant, as appropriate) in its discretion shall determine. Any and all proceeds from leases, easements, licenses, concessions or other rights received by the Community Association with respect to the Common Area, shall be used to pay the Community Expenses as applicable. Each



Person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Unit, shall be deemed to grant a power coupled with an interest to the Community Association Board (or the Declarant, as appropriate), as attorney-in-fact, to exercise the powers as provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Community Association (or other appropriate officer) and duly Recorded.

3.10 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Common Area owned by the Community Association, the proceeds awarded in such condemnation shall be paid first to satisfy any indebtedness secured by a mortgage or other lien encumbering such portion of the Common Area and the balance to the Community Association. The proceeds, if any, paid to the Community Association, together with any Reserve being held for such part of the Common Area shall be used first to restore the remaining Common Area in the vicinity of the portion that was taken to conform as closely as possible to the general appearance and design of the remaining Common Area, and the balance, if any, shall be distributed to the Owners who have the right to use such condemned Common Area and their respective First Mortgagees, as their interests may appear, in equal shares.

3.11 NO DEDICATION TO PUBLIC USE: Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to or for any public use or purpose whatsoever.

3.12 UTILITY COSTS RELATED TO COMMON AREA BILLED TO OWNERS: Certain utility charges incurred in connection with the use, operation and maintenance of the Common Area may not be separately metered to the Common Area. If such charges are metered to an individual Unit rather than being separately metered for the Common Area, then the following shall apply:

(a) If, in the opinion of the Community Association Board, each Owner is sharing in a fair and equitable manner the cost of such service, then no adjustment shall be made and each Owner shall pay his own bill; or

(b) If, in the opinion of the Community Association Board, the Owner of a Unit is being billed disproportionately for costs allocable to the Common Area, then the Community Association shall pay, or reimburse such Owner, an amount equal to the portion of the bill which in the reasonable determination of the Community Association Board is properly allocable to the Common Area, and the amount thereof shall be a Community Expense.

Any determinations or allocations made hereunder by the Community Association Board shall be final and binding on all parties.

3.13 EASEMENT FOR ENCROACHMENT/ MAINTENANCE:

(a) If by reason of the design, construction, reconstruction, settlement or shifting of any Building or other improvement located on the Premises:

(i) Any Unit or Building shall encroach upon another Unit or Building or upon the Common Area;

(ii) Improvements to the Common Area shall encroach upon a Unit or any Building;

then there shall be deemed to be an easement in favor of and appurtenant to such encroaching improvement for the continuance, maintenance, repair and replacement thereof, provided, however, that no such easement shall be created or exist in favor of an Owner (other than the Declarant) if such encroachment occurred due to or resulted from the intentional, willful or negligent conduct of the Owner or the Owner's agents. The Person who is responsible for the maintenance of any encroaching improvement for which an easement for continuance, maintenance, repair and replacement thereof is granted under this Section shall continue to be responsible for the maintenance of such encroaching improvement and the Person who is responsible for the maintenance of the real estate upon which such improvement encroaches shall not have the duty to maintain, repair or replace any such encroaching improvement unless otherwise provided in this Declaration.

(b) Each Owner of a Detached Home Dwelling Unit shall have an easement over portions of Units located adjacent to such Owner's Detached Home Dwelling Unit for the limited purpose of gaining access to portions of the Owner's Detached Home Dwelling Unit in order to perform necessary construction, maintenance, repairs or replacements thereto; however, if the Owner or any of such Owner's contractors or agents causes damage to the adjacent Unit in the course of any such work, such damage shall be repaired at the sole cost and expense of such Owner.

3.14 LANDSCAPING SERVICES: This Section shall apply only to Units which consist of a subdivided lot or a part of a subdivided lot which is improved with a detached single family home ("Detached Home Dwelling Unit"). The Community Association shall make available to each Owner of a Detached Home Dwelling Unit maintenance services of landscaping on the Detached Home Dwelling Unit (a "Special Service"). The Community Association shall from time to time establish and modify (i) specifications for the scope of Special Services to be furnished and (ii) procedures whereby the Owner of a Detached Home Dwelling Unit may choose to receive such Special Services. The cost of furnishing Special Services shall be allocated among the Owners of Detached Home Dwelling Units which receive Special Services as more fully provided in Section 7.09.

3.15 EASEMENTS FOR UTILITIES:

(a) There are hereby reserved to the Declarant and granted to the Association, and the designees of each (which may include, without limitation, any governmental or quasi governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Premises (but not through a structure) to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, security and similar systems, roads, walkways, parks, recreation areas, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas,

and electricity. The Declarant and/or the Association may assign these rights to any local utility supplier, cable company, security company or other company providing a service or utility to the Properties subject to the limitations herein

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or Resident.

(b) There is hereby reserved to the Declarant (for so long as Declarant owns or contracts title to a portion of the Development Area), the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, including easements across or burdening the Common Areas, Lots, or any other portion of the Premises for the orderly development of the Premises and Development Area.

3.16 EASEMENTS FOR CROSS-DRAINAGE: The Declarant hereby reserves for itself and grants to the Association an easement across every Unit, the Common Area and for natural drainage of storm water runoff from other portions of the Premises; provided, no Person shall alter the natural drainage on any Unit to increase materially the drainage of storm water onto adjacent portions of the Premises without the consent of the Owner(s) of the affected Unit, the Community Association Board, and, prior to the Turnover Date, the Declarant.

3.17 RIGHT OF ENTRY: The Declarant hereby grants to the Association an easement of access and right, but not the obligation, to enter all portions of the Premises, including each Unit, or Building for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers, or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry into a Lot, Unit or Building shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Unit or Building to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Community Association Board.

3.18 EASEMENTS FOR MAINTENANCE AND ENFORCEMENT: The Declarant hereby grants to the Association and its authorized agents, a perpetual easement and right to enter all portions of the Premises, including each Unit or Building to (a) perform its maintenance responsibilities under Article Three, and (b) make inspections to ensure compliance with this Declaration. Except in emergencies, entry into a Unit or Building shall be only during reasonable hours and after notice to the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage done to a Unit or Building or Owner's personal property located thereon shall be repaired by the Association at its expense. The Declarant grants to the Association an easement and the right to enter a Unit or Building to abate or remove, using such measures as may be reasonably necessary, any structure,

thing or condition which-violates this Declaration. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Charge hereunder.

3.19 CAPITAL IMPROVEMENT ROAD FUND: The Association shall have the authority to place funds collected through regular and special assessments into a capital improvements road fund. This fund shall be used to pay for any costs related to repairing, restoring, or replacing any damage to private streets, utilities, or Common Areas within any part of the premises.

## ARTICLE FOUR

### Restrictions

4.01 SIGNAGE: No "For Sale" or "For Rent" signs or any other advertising shall be maintained or permitted on any part of the Premises, unless permitted by the Community Association Board. However, the Owner of a Unit may display one (1) "For Sale" sign, in compliance with any and all restrictions governing resale hereunder or any document recorded against his or her Unit, which shall be no larger than 18 inches by 24 inches, in one window of the Unit. The activities of the Declarant in connection with the construction and marketing of the Premises and the activities of any managing agent performed pursuant to a management contract between such managing agent and the Community Association shall not be subject to restrictions set forth in this Section.

4.02 OBSTRUCTIONS: Except as permitted under Section 10.03 or as necessary to perform maintenance of, or make improvements to, the Common Area, there shall be no obstruction of the Common Area or of any emergency access or construction gates. No Owner shall store any items or materials in the Common Area without the prior written consent of the Community Association Board.

4.03 PETS: No animal of any kind shall be raised, bred or kept in the Common Area and no animal shall be raised, bred or kept on a Unit for commercial, breeding or sale purposes. The Community Association Board may from time to time adopt rules and regulations governing the use of the Common Area by pets, including, without limitation, rules and regulations which set aside certain portions of the Common Area as a "dog run" or which require an Owner to clean up after his or her pet. Common household pets shall be permitted in Units subject to rules and regulations adopted from time to time by the Community Association Board. No more than one (1) dog or one (1) cat shall be permitted at any one Unit. Any pet causing or creating a nuisance or unreasonable disturbance to an Owner shall be permanently removed from the Premises upon three (3) days written notice from the Community Association Board to the Owner of the Unit containing such pet and the decision of the Community Association Board shall be final.

4.04 PROHIBITED ACTIVITIES: No noxious or offensive activity, including, without limitation, loud parties or loud noise, shall be carried on or in the Premises, nor shall any activity which might be or become an annoyance or nuisance to Owners, Tenants or Residents be permitted to interfere with the rights of quiet enjoyment, constitute a nuisance, or increase the rate of any insurance payable by the Community Association or decrease the value of the Units. No Owner, Tenant or Resident shall engage in activity within the Premises in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. Nothing in this

Section or in any other Section of this Declaration shall be deemed to prevent Declarant or its agents from engaging in any and all forms of construction and sales activities until all Units in the Premises have been sold by Declarant.

4.05 STRUCTURAL IMPAIRMENT: Nothing shall be done by any Owner, Tenant, Resident or other there contractors, subcontractors, employees, independent contractors, agents or invitees in, on or to the Premises which would impair the structural integrity of any Unit, Building or other structure including, but not limited to, the Owner's own Unit.

4.06 PROHIBITED USES AND STRUCTURES: No clothes, sheets, blankets, or laundry of any kind shall be hung out on any portion of the Premises other than the rear yard of a Unit. No antennae or satellite dish shall be constructed or erected on the exterior of any Unit or Building without the prior written approval of the Community Association Board. No temporary structures or outbuildings shall be constructed or installed on any Unit or Building without the prior written approval of the Community Association Board. Without limiting the foregoing, no structures commonly known as "above ground swimming pools" shall be constructed or maintained on the Premises; however, conventional "in ground" swimming pools may be constructed on lots containing Detached Home Dwelling Units with the prior written approval of the Community Association Board pursuant to Section 5.01. Units shall be kept free and clear of all rubbish, debris, refuse piles and other unsightly objects or materials, including, without limitation, weeds, underbrush or unsightly growths, and no waste shall be committed thereon. All rubbish shall be deposited in such areas and such receptacles as shall be designated by the Community Association Board. Except for garbage pick up days, all garbage cans shall be kept inside garages or other structures approved by the Community Association Board.

4.07 PARKING: Any outdoor private parking areas located on the Common Area shall be used as parking for guests of Owners, Tenants or Residents or as otherwise permitted by the Community Association Board in accordance with reasonable rules and regulations; however, a Resident may park an automobile in an outdoor private parking area for a maximum of seventy-two (72) hours at a time. No boats, trailers, trucks, commercial vehicles, recreational vehicles or similar vehicles or unlicensed vehicles shall be stored or parked overnight on any portion of the Premises (other than inside a garage) except as permitted under rules and regulations adopted by the Community Association Board and the applicable ordinances and regulations of the Municipality. Except for emergencies, no repairs or maintenance work (other than washing) shall be performed on any vehicle on the Premises (other than within a garage).

4.08 SPECIAL USE AND OCCUPANCY RESTRICTIONS: Declarant reserves the right and power to impose special use and occupancy restrictions on certain Units. Any such restrictions shall be set forth in Exhibit D hereto, as Exhibit D may be amended from time to time as provided in Article Nine hereof.

4.09 DRIVEWAYS: Driveway surfaces on the Premises may be poured concrete; bomanite, brick, modular pavers or asphalt; however, no stones, screenings or other "loose" materials shall be permitted for driveways.

4.10 LIGHTS: Coach lights, driveway lights and security lights may be installed by an Owner on the exterior of the Unit with the prior written consent of the Community Association Board. Lights with photocells attached to the exterior of a Unit shall not be disconnected or altered without the prior written consent of the Community Association Board. Each Owner shall be responsible for maintaining all light fixtures which are part of the Owner's Unit including replacement of light bulbs. If in the opinion of the Board an Owner has failed to properly maintain a light fixture, the Board may cause the light fixture to be properly maintained and charge the cost thereof to the Owner as a charge hereunder.

4.11 OCCUPANCY OF UNITS: Occupancy levels of Units should be maintained at a level consistent with guidelines established by the Federal Housing Administration.

4.12 FENCING: No fencing shall be allowed on any Unit.

4.13 BUSINESS USE:

(a) Except as provided in subsections (b) and (c) of this Section, each Unit shall be used only as a residence and no industrial business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Premises without permission of the Community Association Board.

(b) No Resident shall be precluded with respect to his Unit, from (i) maintaining a personal professional library, (ii) keeping his or her personal business records or accounts therein, or (iii) handling his or her personal business or professional calls or correspondence therefrom, or (iv) engaging in other business activities that do not involve customers, clients or suppliers coming to the Premises and that are not otherwise prohibited by applicable laws, ordinances or regulations.

(c) To the extent permitted under applicable laws and ordinances, a Resident may operate a licensed day care service in a Unit.

4.14 LEASING: Any Owner shall have the right to lease all (and not less than all) of the Owner's Unit subject to the following:

(a) No Unit shall be leased for less than six (6) months or for hotel or transient purposes.

(b) The Board shall from time to time prescribe the form of lease which must be used in connection with the lease of a Unit.

(c) Any lease shall be in writing and shall provide that such lease shall be subject to the terms of this Declaration and applicable ordinances of the Municipality and that any failure of the lessee to comply with the terms of this Declaration or applicable ordinances of the Municipality shall be a default under the lease. A lessee shall be bound by the provisions hereof regardless of whether the lease specifically refers to this Declaration.

4.15 LANDSCAPING: Owners of Detached Home Dwelling Units shall select from landscaping options approved by the Design Review Committee for any changes, additions or modifications to the front yards. Front yards of Detached Home Dwelling Units will be maintained by the Community Association and the costs of such maintenance shall be assessed as part of Owners' Community Association dues. If an Owner of a Detached Home Dwelling Unit desires to change, add to or detract from the landscaping in his or her front yard, he or she must get prior approval by the Community Association Board. Owners of Detached Home Dwelling Units shall plant and maintain their own back yards. Back yards shall be fully landscaped within one year of the Owner closing on the purchase of a Detached Home Dwelling Unit.

## ARTICLE FIVE

### Architectural Control/Dwelling Unit Maintenance

5.01 OVERALL CONTROL: The Community Association Board, or a duly authorized committee thereof created pursuant to the By-Laws, shall have the right and power from time to time to adopt reasonable rules and regulations governing the architectural design and exterior finish of all additions, alterations or improvements and landscaping made to or for Units. If an addition, alteration or improvement is made to a Unit the prior written consent as required hereunder but such consent is not obtained, then the Community Association Board may, in its discretion, take any of the following actions:

- (a) Require the Owner to remove the addition, alteration or improvement and restore the Unit to its original condition, all at the Owner's expense; or
- (b) If the Owner refuses or fails to properly perform the work required under (a), the Community Association Board may cause such work to be done and may charge the Owner for the cost thereof as determined by the Community Association Board; or
- (c) Seek any remedy or take any action provided for herein or permitted at law or in equity.

5.02 DECLARANT'S BUILDER RIGHTS: The provisions of Section 5.01 shall not apply to any construction, alterations, modifications, or improvements performed at any time by Declarant, or its employees, agents or contractors, on any part or parts of the Premises, including, without limitation, the architectural design, construction, alteration, improvement, or decorating of any Units, Buildings, any improvements to the Common Area, or any landscaping of any part of the Premises.

### 5.03 UNIT MAINTENANCE:

(a) Except for waste removal services, if any, furnished as provided in (b) below, each Owner of a Unit shall be responsible for the maintenance, repair and replacement of his or her Unit. If in the sole judgment of the Community Association Board an Owner has failed to maintain those portions of the Unit for which he or it is responsible in good condition and repair or the appearance

of such portions is not of the character and quality of that of other Units in the Premises, or is not in compliance with rules and regulations adopted by the Community Association Board from time to time (including, without limitation, the replacement of burned out exterior light bulbs), then without limiting any rights or remedies available to the Community Association Board hereunder or at law, the Community Association Board may cause any maintenance or repair work which it deems necessary or appropriate to be performed and the cost thereof shall be a Charge hereunder and shall be payable by the Owner of the Unit to the Community Association upon demand.

(b) The Community Association Board, in its discretion, may cause waste removal services to be furnished to all Units which are subject to this Declaration and charge the cost thereof as an Assessment to the particular Unit Owner.

(c) The Community Association shall have the right and power to come onto any Unit for the purpose of furnishing the services required or permitted to be furnished hereunder or enforcing its rights and powers hereunder.

## ARTICLE SIX

### The Community Association

6.01 **IN GENERAL:** Declarant has caused or shall cause the Community Association to be incorporated as a not-for-profit corporation under Utah law. The Community Association shall be the governing body for all of the Owners for the administration and operation of the Common Area.

6.02 **MEMBERSHIP:** The Association shall have the following described two classes of voting membership:

Class A. Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to one vote for each Unit in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Unit. The Membership shall be appurtenant to and may not be separated from ownership of a Unit. Ownership of a Unit shall be the sole qualification for membership. If a Unit has more than one Owner, all Co-Owners of the Unit shall share the privileges of such membership subject to reasonable rules and regulations promulgated by the Community Association but, in no event, shall there be more than one vote associated with a Unit. Co-Owners of a Unit shall decide, between themselves, on procedures governing the exercise of votes for the Unit; however, in the event that the Co-Owners have not reached agreement regarding a particular vote by the date and time for such vote to be exercised, the vote associated with that Unit shall be disregarded. If an Owner is a corporation, partnership, or other legal entity, its membership rights may be exercised by an officer, director, partner, or trustee or by an individual the Owner designates from time to time in writing to the Community Association's Secretary.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to eight (8) votes for each Unit in which it holds the interest required for Membership in the Association. The Class B Membership shall terminate at the first meeting of the members after the Turnover Date and at such meeting and thereafter there shall only be one class of membership.



6.03 MAJORITY DECISION: The individuals authorized to exercise the vote of a Class A Members or the Class B Member shall be referred to as "Voting Members." Any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority of the votes represented at the meeting by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

6.04 COMMUNITY ASSOCIATION BOARD: Subject to the rights retained by the Declarant under Section 10.05, each member of the Community Association Board shall be an Owner or a Voting Member and the Community Association Board shall consist of that number of members provided for in the By-Laws.

6.05 ATTENDANCE AT BOARD MEETINGS BY OWNERS: Owners may attend the meeting of the Community Association Board only if, and to the extent, permitted by the Community Association Board in its discretion. It is not the intention that Owners shall have the right to attend meetings of the Community Association Board in the same manner as provided for members of condominium associations under the Utah Condominium Act.

6.06 DIRECTOR AND OFFICER LIABILITY: Neither the directors nor the officers of the Community Association whether elected or designated by the Declarant shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever while acting as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Community Association shall indemnify and hold harmless each of the directors and each of the officers, and each such director's or officer's heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by, or other acts of the directors and officers on behalf of, the Owners or the Community Association or arising out of their status as directors or officers, unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees and expenses, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other in which any such director may be involved by virtue of such person being or having been such director or officer, provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by the Community Association Board there are reasonable grounds for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer.

6.07 MANAGING AGENT: Declarant or an affiliate of Declarant may be engaged by the Community Association to act as the managing agent for the Community Association and as managing agent shall be paid a reasonable fee for its services as fixed by a written agreement between the Community Association and the managing agent. Any management agreement entered into by the Community Association prior to the Turnover Date shall have a term of not more than

two years and shall be terminable by the Community Association without cause or payment of a termination fee by either party on ninety (90) days written notice.

6.08 LITIGATION: No judicial or administrative proceedings shall be commenced or prosecuted by the Community Association without first holding a special meeting of the members and obtaining the affirmative vote of Voting Members representing at least seventy-five percent (75%) of total votes of all Voting Members to the commencement and prosecution of the proposed action. This Section shall not apply to (a) any actions brought by the Community Association to enforce the provisions of this Declaration, the By-Laws or rules and regulations adopted by the Community Association Board (including, without limitation, an action to recover Charges or to foreclose a lien for unpaid Charges) or (b) counterclaims brought by the Community Association in proceedings instituted against it.

6.09 DISSOLUTION: If the Community Association is dissolved and not reinstated within six (6) months, then the Common Area and other assets of the Community Association shall be dedicated to a public body or conveyed to a non-profit organization with similar purposes.

## ARTICLE SEVEN

### Community Association Assessments

7.01 PURPOSE OF ASSESSMENTS: The assessments levied by the Community Association shall be exclusively for the purposes of promoting the recreation, health, safety, and welfare of members of the Community Association, to administer the affairs of the Community Association, to pay the Community Expenses and Limited Community Expenses, and to accumulate reserves for any such expenses.

7.02 COMMUNITY ASSESSMENT: Each year at least sixty (60) days before the beginning of the Community Association's next fiscal year, the Community Association Board shall adopt and furnish each Owner with a budget for the ensuing calendar year, which shall show the following with reasonable explanations and itemizations:

- (a) The estimated Community Expenses;
- (b) The estimated amount, if any, to maintain adequate reserves for Community Expenses, including, without limitation, amounts to maintain the Reserve for the Common Area;
- (c) The estimated net available cash receipts, if any, from sources other than assessments, including, receipts from the operation and use of the Common Area and receipts under any Cost Sharing Agreements plus estimated excess funds, if any, from the current year's assessments;
- (d) The amount of the "Community Assessment" payable by the Owners, which is hereby defined as the amount determined in (a) above, plus the amount determined in (b) above, minus the amount determined in (c) above;

(e) The "Estimated Total Community Assessment Months", which shall be the total number of monthly assessments which the Community Association Board estimates will be payable during the ensuing year, and

(f) That portion of the Community Assessment which shall be payable each month by the Owner of each Unit which is subject to assessment hereunder (as provided in Section 7.04), which shall be equal to the Community Assessment divided by the Estimated Total Community Assessment Months.

(g) That portion of the Community Assessment contributed to the capital improvement road fund as referenced in section 3.20

Anything herein to the contrary notwithstanding the following provisions shall apply with respect to the period prior to the Turnover Date. Any budget ("Stabilized Community Budget") prepared by the Community Association Board prior to the Turnover Date shall be based on the assumptions that (i) the Development has been fully constructed as shown on Declarant's then current development plan for the Development ("Current Development Plan") and (ii) all proposed Units have been sold and are occupied. The Current Development Plan shall be kept on file with the Community Association and may be modified from time to time by Declarant. Each month prior to the Turnover Date, each Owner of a Unit (other than the Declarant or a Participating Builder) shall pay a Community Assessment equal to  $1/12^{\text{th}}$  of the total cash needs, as shown on the Stabilized Community Budget divided by the number of proposed Units shown on the Current Development Plan, so that each Owner (other than Declarant) will pay, with respect to each Unit owned, a monthly Community Assessment equal to what such Owner would be paying with respect to the Owner's Unit if the Development were fully constructed pursuant to the Current Development Plan and all proposed Units have been built and are occupied. Declarant shall not be obligated to pay any Community Assessments to the Community Association prior to the Turnover Date. However, if with respect to the period commencing on the date of the Recording of this Declaration and ending on the Turnover Date, the amount of Community Assessments and initial capital contributions for Community Expenses payable by Owners (other than Declarant) less the portions thereof which are to be added to Reserves is less than the Community Expenses actually incurred with respect to such period, then the Declarant shall pay the difference to the Community Association. From time to time prior to the Turnover Date the Declarant shall deposit with the Community Association amounts which reasonably approximate Declarant's obligation hereunder as estimated by the Declarant. A final accounting and settlement of the amount, if any, owed by Declarant to the Community Association, or vice versa, shall be made as soon as practicable after the Turnover Date. Anything herein to the contrary notwithstanding the following provisions shall apply with respect to the period prior to the Turnover Date.

7.03 PAYMENT OF ASSESSMENTS: On or before the first day of the ensuing fiscal year, and on or before the first day of each and every month thereafter until the effective date of the next annual or revised Community Assessment, each Owner of a Unit which is subject to assessment shall pay to the Community Association, or as the Community Association Board may direct, that portion of the Community Assessment, if any, which is payable by each Owner of a Unit under Sections 7.02(f) and 7.03(f), as applicable. Anything in this Declaration to the contrary notwithstanding, a Dwelling Unit shall not be deemed to be subject to assessment hereunder until

such time as the Dwelling Unit is either conveyed by Declarant to a purchaser for value or first occupied as a residence, whichever occurs first.

**7.04 SPECIAL ASSESSMENT:** After the Turnover Date, the Community Association Board may levy a special assessment as provided in this Section (i) to pay (or build up reserves to pay) expenses other than Community Expenses incurred (or to be incurred) by the Community Association from time to time for a specific purpose including, without limitation, to make alterations, additions or improvements to the Common Area, or any other property owned or maintained by the Community Association, (ii) to cover an unanticipated deficit under the prior year's budget, or (iii) to supplement the current year's Community Assessment. A special assessment for the Common Area or matters affecting all Owners shall be allocated among all Units in equal shares. No special assessment which shall require the aggregate payment with respect to a Unit of greater than five (5) times the most recent monthly Community Assessment for such Unit shall be adopted without the affirmative vote of at least sixty-seven percent (67%) of the votes of Voting Members representing Units which would be subject to the special assessment who cast their votes on the question. The Community Association Board shall serve notice of a special assessment on all Owners of Units which shall be subject to the special assessment by a statement in writing giving the specific purpose and reasons therefore in reasonable detail, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Community Association Board. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

**7.05 RESERVES:** The Community Association shall segregate and maintain special reserve accounts to be used solely for making major repairs or replacements in connection with the Common Area (the "Reserves"). The Community Association Board shall determine the appropriate level of Reserves based on a periodic review of the useful life of improvements to the Common Area, and other property owned by the Community Association and periodic projections of the cost of anticipated major repairs or replacements to such improvements. The Reserves may be built up by special assessment or out of the Community Assessment, or Special Service Charges, as applicable. Each budget shall disclose that percentage of the Common Area Assessment, or Special Service Charges as applicable, which shall be added to the Reserves.

**7.05 INITIAL CAPITAL CONTRIBUTION:** Upon the closing of the sale of each Unit by the Declarant to a purchaser for value, the purchasing Owner shall make a capital contribution to the Community Association in an amount equal to one (1) month Community Assessment at the rate then in effect with respect to the Unit as of the closing. Said amount shall be held and used by the Community Association for its working capital needs.

**7.06 COST OF SPECIAL SERVICES:** If the Community Association is required to furnish Special Services to Detached Home Dwelling Units as provided in Section 3.16, then the cost of furnishing each type of Special Services shall be paid by the Owners of benefited Detached Home Dwelling Units in such proportions as shall be determined by the Community Association Board. The Community Association Board may, in its discretion, collect the estimated cost of furnishing each category of Special Services and, if appropriate, Reserves therefore based on reasonable estimates thereof in such installments and upon such frequency as the Community

Association Board shall determine. The Community Association Board may adjust the amount payable or refund excess amounts collected based on the actual cost as determined by the Community Association Board from time to time. Any amount required to be paid by an Owner for or in connection with the furnishing of Special Services to his or her Detached Home Dwelling Unit shall be a Charge hereunder.

7.07 FINICIAL STATEMENTS: Within a reasonable time after the close of each fiscal year, the Community Association Board shall furnish each Owner with a balance sheet and financial statement for the Community Association for the preceding year.

## **ARTICLE EIGHT**

### **Collection of Charges**

8.01 CREATION OF LIEN AND PERSONAL OBLIGATION: The Declarant for each Unit hereby covenants, and each Owner of a Unit by acceptance of a deed therefore (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay to the Community Association all Charges made with respect to the Owner on the Owner's Unit. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Unit against which such Charge is made and also shall be the personal obligation of the Owner of the Unit at the time when the Charge becomes due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Community Association.

8.02 NON PAYMENT OF CHARGES: Any Charge that is not paid to the Community Association when due shall be deemed delinquent. Any Charge which is delinquent for thirty (30) days or more shall bear interest at the contract rate of interest then permitted in Utah but not to exceed eighteen percent (18%) per annum from the due date to the date when paid and the Community Association may assess a reasonable late fee and may (i) bring an action against the Owner personally obligated to pay the Charge to recover the Charge (together with interest, costs and reasonable attorney's fees for any such action, which shall be added to the amount of the Charge and included in any judgment rendered in such action), and (ii) enforce and foreclose any lien which it has or which may exist for its benefit. No Owner may waive or otherwise escape personal liability for the Charges hereunder by nonuse of the Common Area, associated with his or her Unit or by abandonment or transfer of his Unit.

8.03 LIEN FOR CHARGES SUBORDINATED TO MORTGAGES: The lien for Charges, provided for in Section 8.01, shall be subordinate to a First Mortgage on the Unit which was Recorded prior to the date that any such Charge became due and shall be on a parity with any lien for assessments levied by any Residential Association on the Dwelling Unit. Except as hereinafter provided, the lien for Charges, provided for in Section 8.01, shall not be affected by any sale or transfer of a Dwelling Unit. Where title to a Dwelling Unit is transferred pursuant to a decree of foreclosure of the First Mortgage or by deed or assignment in lieu of foreclosure of the First Mortgage, such transfer of title shall extinguish the lien for unpaid Charges which became due prior to the date of the transfer of title. However, the transferee of the Dwelling Unit shall be personally liable for his share of the Charges with respect to which a lien against his Dwelling Unit has been extinguished pursuant to the preceding sentence where such Charges are reallocated among all the Owners pursuant to a subsequently adopted annual or revised Community

Assessment or special assessment, and non-payment thereof shall result in a lien against the transferee's Dwelling Unit, as provided in this Article.

## **ARTICLE NINE**

### **Annexing Additional Property**

9.01 **IN GENERAL:** Declarant reserves the right at any time and from time to time prior to thirty (30) years from the date of Recording of this Declaration to make additional portions of the Development Area part of the Premises, by Recording a supplement to this Declaration (a "Supplemental Declaration"), as hereinafter provided. Any portion of the Development Area which is made a part of the Premises by a Supplemental Declaration shall be referred to as "Added Premises"; any portion of any Added Premises which is made part of the Common Area shall be referred to as "Added Common Area"; and any Units contained in the Added Premises shall be referred to as "Added Units."

9.02 **POWER TO AMEND:** Declarant hereby retains and reserves the right and power to Record a Supplemental Declaration at any time and from time to time as provided in Section 9.01, which amends or supplements Exhibit B, Exhibit C and/or Exhibit D. Exhibit B may only be amended or supplemented pursuant to this Article to make portions of the Development Area part of Exhibit B and shall not be amended to reduce or remove any real estate which is described in Exhibit B immediately prior to the Recording of such Supplemental Declaration. Exhibit C may be amended to revise the Site Plan to show the addition of the Added Premises and to identify Added Common Area, and Added Units. Exhibit D may only be amended or supplemented pursuant to this Article to designate use and occupancy restrictions which shall apply to the Added Units. A Supplemental Declaration may contain (or may amend Exhibit D to add) such additional provisions affecting the use of the Added Premises or the rights and obligations of owners of any part or parts of the Added Premises as the Declarant deems necessary or appropriate; provided, that, in the event of conflict between any such additional provisions and the provisions in this Declaration as originally Recorded then the provisions of this Declaration as originally Recorded shall govern.

9.03 **EFFECT OF SUPPLEMENTAL DECLARATION:** Upon the Recording of a Supplemental Declaration by Declarant which annexes and subjects to this Declaration Added Premises as provided in this Article, then the following shall apply:

(a) The easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein with respect to the Premises shall run with and bind the Added Premises and inure to the benefit of and be binding on any Person having at any time any interest or estate in the Added Premises in the same manner, to the same extent and with the same force and effect that this Declaration applies to the Premises and such Persons prior to the date of the Recording of the Supplemental Declaration;

(b) Every Owner of an Added Unit shall be a member of the Community Association on the same terms and subject to the same qualifications and limitations as those members who are Owners of Units immediately prior to the Recording of such Supplemental Declaration;

(c) In all other respects, all of the provisions of this Declaration shall include and apply to the Added Premises (including the Added Common Area or the Added Units, if any) made subject to this Declaration or designated by any such Supplemental Declaration and the Owners, mortgagees, and lessees thereof, with equal meaning and of like force and effect and the same as if such Added Premises were subjected to this Declaration at the time of the Recording hereof;

(d) The Recording of each Supplemental Declaration shall not alter the amount of the lien for any Charges made to a Unit or its Owner prior to such Recording;

(e) The Declarant shall have and enjoy with respect to the Added Premises all rights, powers and easements reserved by or to the Declarant in this Declaration, plus any additional rights, powers and easements set forth in the Supplemental Declaration; and

(f) Each Owner of an Added Unit which is subject to assessment hereunder shall be responsible for the payment of the assessments pursuant to Sections 7.02 and 7.03, but shall not be responsible for the payment of any special assessment which was levied prior to the time that the Added Unit became subject to assessment hereunder.

## ARTICLE TEN

### **Declarant's Reserved Rights and Special Provisions Covering Development Period**

10.01 IN GENERAL: In addition to any rights or powers reserved to the Declarant under the provisions of this Declaration or the By-Laws, the Declarant shall have the rights and powers set forth in this Article. Anything in this Declaration or the By-Laws to the contrary notwithstanding, the provisions set forth in this Article shall govern. If not sooner terminated as provided in this Article, the provisions of this Article shall terminate and be of no further force and effect from and after such time as the Declarant is no longer vested with or controls title to any portion of the Development Area.

10.02 PROMOTION OF PROJECT: In connection with the promotion, sale or rental of any improvements upon the Premises or Development Area or at other developments in the general vicinity of the Development Area which are being offered for sale by Declarant or any of its affiliates: (i) the Declarant shall have the right and power, within its sole discretion, to construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Premises as the Declarant may, from time to time, determine to be necessary or advisable, including, without limitation, the right to construct and maintain model Units, sales offices, parking areas, walkways and fencing, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Declarant may deem advisable; (ii) Declarant, and its respective agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Common Area, at any and all reasonable times without fee or charge; and (iii) the Declarant shall have the right to sell or lease Units to whomever, and on such terms, as such entity, in its sole discretion, shall determine.

10.03 CONSTRUCTION ON PREMISES: In connection with the construction of improvements to any part of the Premises or Development Area, the Declarant, and its respective agents and contractors, shall have the right, at its own expense, (but shall not be obligated) to make

such alterations, additions or improvements to any part of the Premises including, without limitation, the construction, reconstruction or alteration of any temporary or permanent improvements to any structure which shall contain Units, the Common Area which the Declarant deems, in its sole discretion, to be necessary, advisable or required by the Municipality, and the landscaping, sodding or planting and replanting of any unimproved portions of the Premises. In connection with the rights provided in the preceding sentence, the Declarant and its respective agents and contractors, shall have the right of ingress, egress and parking on the Premises and the right to store construction equipment and materials on the Premises without the payment of any fee or charge whatsoever.

**10.04 GRANT OF EASEMENTS AND DEDICATIONS:** Declarant shall have the right to dedicate portions of the Common Area to the County, the Municipality or any municipality or other governmental authority which has jurisdiction over such portions. Declarant shall also have the right to reserve or grant easements over the Common Area to any governmental authority, public utility or private utility for the installation and maintenance of electrical and telephone conduit and lines, gas, sewer or water lines, or any other utility services serving any Unit or any other real estate (whether or not a part of the Development Area).

**10.05 DECLARANT CONTROL OF BOARD:** Prior to the Turnover Date, the first and all subsequent Community Association Board shall consist solely of three (3) persons from time to time designated by the Declarant, which persons may, but need not, be members under Section 6.02. From and after the Turnover Date, the Community Association Board shall be constituted and elected as provided herein and in the By-Laws.

**10.06 OTHER RIGHTS:** The Declarant shall have the right and power to execute all documents and do all other acts and things affecting the Premises which, in the Declarant's opinion, are necessary, desirable or required by the Municipality in connection with the rights of the Declarant or any Participating Builder under this Declaration.

## **ARTICLE ELEVEN**

### **Remedies for Breach or Violation**

**11.01 SELF-HELP BY BOARD:** In the event of a violation by an Owner of the provisions, covenants or restrictions of the Act, the Declaration, the By-Laws, or rules or regulations of the Community Association Board, where such violation or breach may be cured or abated by affirmative action, the Community Association Board, upon not less than ten (10) days prior written notice, shall have the right to enter upon that part of the Premises where the violation or breach exists and summarily abate, remove or do whatever else may be necessary to correct such violation or breach; provided, however, that where the violation or breach involves an improvement located within the boundaries of a Unit, judicial proceedings shall be instituted before any items of construction can be altered or demolished. Any and all expenses in connection with the exercise of the right provided by this Section shall be a Charge hereunder payable by the violating Owner.

**11.02 SUSPENSION OF RIGHTS:** Upon the giving of written notice thereof to a Resident, the Community Association Board or its authorized committee may, in addition to any



remedies it may have hereunder, suspend the right of such Resident to use the Common Area as follows:

- (a) For so long as any assessment against such Resident's Unit remains unpaid, plus a reasonable time thereafter as determined by the Community Association Board, or
- (b) For so long as such Resident shall be and shall continue to be in violation of any provision of this Declaration, the By-Laws or the rules and regulations hereunder, or
- (c) For a reasonable period for any infraction of any provision of this Declaration, the By-Laws or the rules and regulations hereunder.

Any such notice shall state the reason for the suspension. Any Resident who receives such notice may, within three (3) days after receipt of such notice, demand a hearing before the Community Association Board or its authorized committee. At such a hearing a member of the Community Association Board shall present to the Resident the grounds for the suspension notice and the Resident shall have an opportunity to challenge such grounds and to present any evidence on his behalf subject to such reasonable rules of procedure as may be established by the Community Association Board or its authorized committee. If the Resident demands a hearing as herein provided, his suspension shall not become effective until the hearing has been held and notice of the decision of the Community Association Board or its authorized committee confirming the suspension and the terms thereof has been given to the Resident. The decision of the Community Association Board or its authorized committee shall be final and binding. Anything herein to the contrary notwithstanding, the Community Association Board shall not have the right or power to deny an Owner access to his Unit over and across roads or walkways located on the Common Area.

**11.03 OTHER REMEDIES OF THE BOARD:** In addition to or in conjunction with the remedies set forth above or elsewhere in this Declaration, in the event of a violation by an Owner of this Declaration, the By-Laws, or rules and regulations of the Community Association Board, the Community Association Board or its agents shall have the right to levy a reasonable fine and/or bring an action at law or in equity against the Owner and/or others as permitted by law including, without limitation, (i) to foreclose a lien against a Unit, (ii) for damages, injunctive relief, or specific performance, (iii) for judgment or for the payment of money and the collection thereof (including fines), and (iv) for any other relief which the Community Association Board may deem necessary or appropriate. Any and all rights and remedies provided for in this Article may be exercised at any time and from time to time cumulatively or otherwise by any provisions of this Declaration, the By-Laws or rules and regulations of the Community Association Board, and failure to exercise such rights on any occasion shall in no event be deemed a waiver of the right to do so thereafter.

**11.04 COSTS AND EXPENSES:** All expenses incurred by the Community Association Board in connection with the actions, proceedings or self-help in connection with the exercise of its rights and remedies under this Article, including, without limitation, court costs, attorneys' fees and all other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest contract rate of interest then permitted in Utah (but not to exceed 18% per annum)

until paid, shall be a Charge hereunder payable by the defaulting Owner, and the Association shall have a lien for all the same upon his Unit, as provided in Section 8.01.

11.05 ENFORCEMENT BY OWNERS: Enforcement of the provisions contained in this Declaration and the rules and regulations adopted hereunder may be by any proceeding at law or in equity by the Association and/or a majority of the Owner's against any person or persons violating or attempting to violate any such provisions, either to restrain such violation or to recover damages, and against a Unit to enforce any lien created hereunder.

## ARTICLE TWELVE

### Amendment

12.01 SPECIAL AMENDMENTS: Anything herein to the contrary notwithstanding, Declarant reserves the right and power to Record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Fannie Mae, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with First Mortgages covering Units, (iii) to correct errors, omissions, ambiguities or inconsistencies in this Declaration or any Exhibit thereto, (iv) to bring this Declaration into compliance with applicable laws, ordinances or governmental regulations, or (v) to modify the Site Plan to reflect a change in the Declarant's plan for the Development. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and Record Special Amendments. The right and power to make Special Amendments hereunder shall terminate on the Turnover Date.

12.02 AMENDMENT: Subject to Section 12.01 and Article Thirteen, the provisions of this Declaration or the Articles of Incorporation of the Community Association may be amended, abolished, modified, enlarged, or otherwise changed in whole or in part by the affirmative vote of Voting Members or by an instrument executed by Owners, representing at least seventy-five percent (75%) of the Units; except, that (i) the provisions of this Section 12.02 may be amended only by an instrument executed by all of the Owners and all First Mortgagees, (ii) Article Nine, Article Ten or any other provisions relating to the rights of Declarant may be amended only upon the written consent of the Declarant, (iii) Exhibits B, C and D may be supplemented by Declarant as provided in Article Nine, and (iv) prior to the Turnover Date no amendment shall be made without the written consent of the Declarant. No amendment which removes Premises from the provisions of this Declaration shall be effective if as a result of such removal, an Owner of a

Dwelling Unit shall no longer have the legal access to a public way from his Dwelling Unit. No amendment shall become effective until properly Recorded.

## **ARTICLE THIRTEEN**

### **Rights of First Mortgagees**

13.01 **NOTICE TO FIRST MORTGAGEES:** Upon the specific, written request of a First Mortgagee to the Community Association Board, such First Mortgagee shall receive some or all of the following, as designated in the request:

(a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Community Association to the Owners;

(b) Any audited or unaudited financial statements of the Community Association which are prepared for the Community Association and distributed to the Owners;

(c) Copies of notices of meetings of the Owners;

(d) Notice of the decision of the Owners to release any part or all of the Premises from the provisions of this Declaration;

(e) Notice of any proposed action which would require the consent of First Mortgagees pursuant to Section 13.02;

(f) Notice of the decision of the Community Association to terminate professional management and assume self-management;

(g) Notice of any substantial damage to any part of the Common Area or a Neighborhood Facility in the Neighborhood in which the Unit is located;

(h) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Common Area;

(i) Notice of any default under this Declaration, the By-Laws, or the rules and regulations of the Community Association which is not cured within 30 days of the date of the default by the Owner of the Unit which is subject to a First Mortgage held by such First Mortgagee;

(j) The right to examine the books and records of the Community Association at any reasonable times; and

(k) In the case of a First Mortgagee, the right to be listed on the records of the Community Association as an "Eligible Mortgagee" for purposes of Section 13.02 below. The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Community Association. Failure of the Community Association to provide any of the foregoing to a party who has made a proper request therefore shall not affect the validity of any action which is related to any of the foregoing.

## 13.02 CONSENT OF FIRST MORTGAGEES:

(a) In addition to any requirements or prerequisites provided for elsewhere in this Declaration, the consent of First Mortgagees holding, in the aggregate, First Mortgages on at least fifty one percent (51%) of the Units (by number) which are subject to First Mortgages held by First Mortgagees which specifically request to be treated as "Eligible Mortgagees" under Section 13.01(k) will be required for the Community Association to do or permit to be done any of the following:

(1) Adoption of an amendment to this Declaration which (i) changes Article Seven or otherwise changes the method of determining the Community Assessments or other Charges which may be levied against a Owner, (ii) changes Section 8.03 or Article Twelve, (iii) changes this Article Thirteen or any other provision of this Declaration or the By-Laws which specifically grants rights to First Mortgagees, (iv) materially changes insurance and fidelity bond requirements, (v) changes Article Five, or (vi) changes voting rights;

(2) The abandonment, partition, subdivision, encumbrance, sale, or transfer of the Common Area owned by the Community Association (except for the granting of easements for public utilities or dedication for public purposes or for other purposes consistent with the intended use of the Common Area);

(3) The removal of a portion of the Common Area from the provisions of this Declaration;

(4) The effectuation of a decision by the Community Association to terminate professional management and assume self-management if professional management had been previously required hereunder or by a First Mortgage;

(5) The use of hazard insurance proceeds for losses to the Common Area, for other than the repair, replacement, or reconstruction of the Common Area;

provided, that, such consent of Eligible Mortgagees will not be required with respect to any action under (1) through (5) above which occurs as a result of (i) a taking of a portion or all of the Common Area by condemnation or eminent domain, or (ii) or any action taken pursuant to Article Nine.

(b) Whenever required, the consent of an Eligible Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary, in writing, by the Eligible Mortgagee within thirty (30) days after making the request for consent, by certified or registered mail, return receipt requested.

13.03 INSURANCE PROCEEDS/CONDEMNATION AWARDS: In the event of (i) any distribution of any insurance proceeds hereunder as a result of damage to, or destruction of any part of the Common Area or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Common Area or,

any such distribution shall be made to the Owners who are responsible for paying assessments with respect to such property and their respective First Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the First Mortgagee of a Unit with respect to any such distribution to or with respect to such Unit; provided, that, nothing in this Section shall be construed to deny to the Community Association the right (i) to apply insurance proceeds to repair or replace damaged improvements to the Common Area as provided in Article Three or (ii) to apply proceeds of any award or settlement as a result of eminent domain proceedings as provided in Article Three.

## **ARTICLE FOURTEEN**

### **Dispute Notification and Resolution Procedures**

14.01 **IN GENERAL:** Any Dispute (defined in Section 15.03 below) between (i) the Association or an Owner or Owners and (ii) the Declarant or any member, manager, employee, contractor, subcontractor, or affiliate of the Declarant (“Declarant Group Member”) shall be subject to the provisions of this Article.

14.02 **NOTICE AND OPPORTUNITY TO CURE:** If any Owner or the Association (“Complaining Party”) asserts a Claim involving an alleged material structural or other defect (“Alleged Defect”) in the Premises or any improvement thereto or thereon, which the Complaining Party believes may be the responsibility of a Declarant Group Member, the Complaining Party shall notify the Declarant Group Member in writing. Such notice (“Defect Notice”) shall include:

- (a) a description of the Alleged Defect, with copies of any experts’ reports or inspections obtained by the Complaining Party, and
- (b) the date upon which the Alleged Defect was discovered.

The Declarant Group Member shall, in its sole discretion, within thirty (30) calendar days after receipt of the Defect Notice, be entitled to inspect the portion of the Premises on which the Alleged Defect is located on one or more occasions regarding the Alleged Defect and within its sole discretion, be entitled, within a reasonable period of time thereafter, to cure the Alleged Defect. A Complaining Party shall not pursue any other remedies available to it under this Section 15.02 until the Declarant Group Member has had the notice and opportunity to cure the Alleged Defect described above. Except as otherwise provided in any written limited warranty provided to an Owner or the Association by Declarant, the provisions of this Section 15.02 do not establish any contractual duty or obligation on the part of any Declarant Group Member to inspect, repair, replace or cure any Alleged Defect. If the Declarant Group Member shall fail, for any reason other than the fault of the Complaining Party, to inspect and/or cure the Alleged Defect within the time period specified above, Owner’s sole remedy shall be to proceed as provided in Section 15.03 hereof. In no event shall any Declarant Group Member be liable to any Complaining Party for any general, special or consequential damage, costs, diminution in value or other loss which a Complaining Party may suffer as a result of any Alleged Defect. The Complaining Party and the Declarant Group Member are sometimes referred to herein, individually as a “Party” and collectively as the “Parties”.

14.03 RESOLUTION OF DISPUTES: Subject to the provisions of Section 15.02 above, Complaining Party and the Declarant Group Member hereby agree that the mediation and arbitration procedures described below, shall be the sole, exclusive and final means of resolving any Dispute between them and/or between their respective successors in interest. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THEY ARE FOREGOING ANY AND ALL RIGHTS TO HAVE ANY DISPUTE, AS DEFINED HEREUNDER, TO BE HEARD BY A COURT OR JURY. As used herein, "Dispute" shall mean any claim, cause of action (whether at law or in equity), or disagreement of any nature whatsoever ("Claim") arising from or in connection with the sale of a Unit to an Owner, construction or installation of any improvements on the Premises, the grading of the Premises or any work or services performed by a Declarant Group Member on or in connection with the Premises including, without limitation, Claims for real and personal property damage, construction defects (whether patent or latent), bodily injury or wrongful death, non-disclosure, misrepresentation, fraud, unfair housing practices, monetary damages, rescission of any agreement, enforceability of this Declaration and/or specific performance.

(a) Mediation. If a Dispute still exists after the Declarant Group Member has been provided the notice and opportunity to cure an Alleged Defect described in Section 15.02 above or if a Dispute involves a matter other than an Alleged Defect, the Parties agree that they shall attempt to mediate the Dispute. Either Party may initiate mediation to resolve a Dispute through a written request to the other Party; provided, that; if the Association is the Party initiating the mediation, the Association shall first hold a special meeting of the members and obtain the affirmative vote of Voting Members representing at least seventy five percent (75%) of the total votes represented by all Voting Members to the initiation of mediation. In no event shall initiation of mediation extend any applicable statute of limitation for the Claim or Dispute at issue. The written request ("Mediation Request") shall include: (i) a description of the nature of the Dispute; and (ii) a proposal for the manner in which the Dispute may be resolved, including the facts supporting such proposal. If neither Party initiates mediation in accordance herewith within forty-five (45) calendar days after Declarant's receipt of a Defect Notice or notice of a Claim other than a Defect Notice, the Parties agree that they waive the Dispute and any and all Claims relating or arising from the Dispute. The mediation shall be conducted by the American Arbitration Association ("AAA") located in Salt Lake City, Utah, pursuant to the mediation procedures adopted by the AAA or any successor thereto or any other entity offering mediation services acceptable to the Parties. Within twenty (20) calendar days following the receipt by the applicable Party of the Mediation Request, the Parties shall select a mediator in accordance with the AAA rules and procedures. If the Parties cannot agree on a mediator within the time frame provided herein, they agree that the AAA shall appoint a mediator. Within fourteen (14) calendar days following selection of the mediator, each Party shall submit to the mediator a brief memorandum setting forth its position with respect to the issues involved in the Dispute ("Memorandum"). A Party's Memorandum may not be disclosed by the mediator to the other Party without the consent of the Party submitting same. The mediation shall be commenced within fourteen (14) calendar days following the submittal by each Party of its Memorandum and shall be concluded within fourteen (14) calendar days following commencement of the mediation unless the Parties mutually agree to an extension thereof. The mediation shall be held in Salt Lake City, Utah, or such other place as may be mutually acceptable to the Parties. The Parties shall each bear their own attorney and/or expert/consultant fees. All other expenses of the mediation, including required traveling and

other expenses of the mediator; and expenses of any witnesses and costs of any expert advice, at the direct request of the mediator, shall be borne equally by the Parties. If any Dispute is not resolved through mediation, the mediator shall prepare a written statement ("Mediation Statement") setting forth the issues which the Parties were not able to resolve, and the respective positions of the Parties regarding such issues. The Mediation Statement shall be executed by both Parties and shall be submitted by the mediator to the arbitrator as provided below. If the Parties are unable to agree on the Mediation Statement within seven (7) calendar days after it has been prepared by the mediator, each Party shall, within fourteen (14) calendar days after the Mediation Statement has been prepared by the Mediator, submit its own Mediation Statement to the mediator who will submit both Mediation Statements to the arbitrator as provided below. The Mediation Statement(s) shall be evidence to the arbitrator of compliance by the Parties with the mediation requirements hereof. The mediation proceedings shall be privileged under the Utah evidence code; however, the Parties agree that the Mediation Statement(s) shall not be subject to any such privilege.

(b) Arbitration. If the Parties are unable to resolve a Dispute through mediation as described above, the Dispute shall be submitted to binding arbitration by the AAA under the Commercial Arbitration Rules of the AAA. As a condition to commencement of the arbitration, the Parties shall ensure that the mediator provides to the arbitrator a copy of the Mediation Statement(s). The arbitrator shall have jurisdiction to address only the issues set forth in the Mediation Statement(s). Except as provided herein, the results of the arbitration shall be final and non-appealable upon both Parties, and may be enforced by either Party in a Court of competent jurisdiction. A request for arbitration must be filed under the Commercial Arbitration Rules of the AAA no later than thirty (30) calendar days after the date of the Mediation Statement(s). In the event the request for arbitration is not filed in accordance herewith within thirty (30) calendar days after the date of the Mediation Statement(s), the Parties agree that they waive the Dispute and any and all Claims relating to or arising from the Dispute. No notice, claim or communication between the Parties, whether under any written limited warranty or otherwise shall stop the running of any statute of limitations. In addition to the Commercial Arbitration Rules of the AAA, the following additional rules shall govern the arbitration: (i) the arbitration shall be conducted by a single arbitrator, (ii) unless the prior written consent of both Parties is obtained, the Parties to the arbitration shall be limited to Complaining Party and Declarant and both Parties agree not to attempt to include additional parties in the arbitration or consolidate the arbitration with any other arbitrations or legal proceedings; (iii) the Party requesting arbitration shall post the initial fee for such arbitration although the arbitrator shall have the discretion to require reimbursement of the fee in connection with any award; (iv) the arbitrator shall follow the law of the State of Utah; (v) any decision relating to the interpretation or application of the statute(s) of limitations shall be appealable under the rules of the AAA; (vi) the Parties shall be permitted to conduct discovery in accordance with the Utah Rules of Civil Procedure; and (vi) the arbitrator shall provide the Parties with written findings of fact and law in support of each element of his/her award. The arbitrator shall also stay any arbitration proceedings unless the arbitrator has received a copy of the Mediation Statement(s) described above, confirming the Parties' compliance with Section 15.03(a) hereof.

**ARTICLE FIFTEEN****Design Committee and Design Requirements**15.01 General

(a) Design Guidelines. The Design Guidelines (a copy of which is attached hereto as Exhibit E and incorporated herein by reference) set forth specific building guidelines, restrictions and other covenants relating to the modification, alteration, or addition to a Unit. The Design Guidelines, together with all changes to the same adopted by the Design Review Committee, shall be available for review in the office of the Association during normal business hours. Any Owner wishing to have a copy of the Design Guidelines together with all changes adopted by the Design Review Committee, shall pay the cost of reproduction to the Association which shall be charged at the rate of \$.50 per page; provided, however, there shall be no charge for the first copy with respect to each Unit.

(b) Mailboxes. To maintain the aesthetic qualities of the Development, Declarant may select group mailboxes for Dwelling Units, and designate convenient locations through out the Premises for their installation. Mailbox design and material standards must be approved by the Design Review Committee.

(c) Trash and Garbage Containers. Owners or occupants of Units shall not place trash or garbage containers in public view except on trash collection days and then on those days the garbage containers shall be removed from the public view no later than twelve (12) hours after the garbage has been picked up by the person charged with the collection efforts. Garbage, trash and other refuse shall be placed in covered containers approved by the Design Review Committee, except as otherwise expressly required by law. All garbage containers shall be put on one side of the street only, to facilitate rapid collection, as shown on the plat. Recyclable products or materials may be placed for collection in containers expressly designed or legally required for such collection. In any event, the area around any such garbage pick-up point on a rear-loaded lot must be maintained so that garbage containers are not visible from any street or rear lane. Owners shall further use and store trash and garbage containers in compliance with any applicable Rules and Regulations of the Association.

15.02 Design Review Committee.

(a) General The Design Review Committee is an agency, department or division of the Association.

(b) Composition. The Design Review Committee shall have either three (3) members or five (5) members; initially, the Design Review Committee shall consist of three (3) members. Should the Community Association Board wish to declare that there shall be an increase in the number of members serving on the Design Review Committee, it may do so at a regularly called meeting of the Community Association Board. All members of the Design Review Committee shall be appointed by Declarant prior to the Turnover Date. After the Turnover Date the Community Association Board shall appoint the additional members of the Design Review Committee.



(c) Cost of Operation. The Association shall be responsible for all reasonable costs of operation of the Design Review Committee.

(d) Rules and Procedures. The Design Review Committee is authorized to adopt rules and procedures and to adopt, firm time to time, amendments to said rules and procedures for the conduct of its business, consistent with the provisions of this Declaration. Any Owner shall be provided with a copy of such rules and procedures within fifteen (15) days of submission of a written request to the Community Association Board.

15.03 Approved Contractors, Architects and Design Professionals.

(a) Contractors, Architects, and Design Professionals. Unless waived by the Design Review Committee, no Owner shall self-contract the modification, alteration or addition to any Unit. The contractor, architect, or other design professional selected by an Owner to modify, alter or add to a Unit must be approved by the Design Review Committee, in its sole discretion. Any approval by the Design Review Committee of a contractor, architect, or design professional is not meant as an endorsement of their ability and shall not be the basis for any liability on the part of the Design Review Committee.

(b) Access to Approved Lists. The list of approved contractors and the list of approved architects and other design professionals shall be maintained by the Association in the office of the Association and those lists shall be available for review by Owners during regular business hours of the Association.

(c) Approval Process. Should an Owner desire to modify, alter or add to a Unit by using a contractor, architect, or design professional who is not approved by the Design Review Committee, the said Owner shall submit to the Design Review Committee such information as may be requested by the Design Review Committee which information may include without limitation thereto, the following;

- (i) name, address, and telephone number of the proposed contractor,
- (ii) a listing of three dwellings or similar types of improvements constructed or designed, as the case may be, by the proposed contractor or design professional, together with photographs of such dwellings or similar types of improvements;
- (iii) a listing of three references with telephone numbers who may be called to discuss the quality, effectiveness, thoroughness and other aspects of services to be provided by the proposed contractor or design professional;
- (iv) evidence of insurance satisfactory to the Design Review Committee;
- (v) evidence of ability to obtain payment and performance bonds, or other evidence of net worth and liquidity;

- (vi) as to a contractor, other evidence of ability to build or remodel a dwelling or other improvements in a timely manner, in accordance with plans and specification; and
- (vii) as to a design professional, other evidence of ability to design and provide specifications for a dwelling or other improvements which would be consistent with the requirements of this Declaration and the Urban Design Guidelines.

#### 15.04 Design Review Procedure.

(a) Construction Subject to Review. All modifications, alterations or additions, (except interior alterations not affecting the external structure or appearance of any building) on any Unit or Common Area must be approved in advance by the Design Review Committee. Modifications subject to review specifically include, but are not limited to, painting or other alteration of a Unit (including doors, windows and trim); replacement of a roof or other parts of a Unit other than the duplicates of the original material or color, installation of antennae, satellite dishes or receivers, solar panels or other devices; construction of fountains, swimming pools, whirlpools or other pools; construction of privacy walls or other fences or gates; addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation that are visible from public areas; window coverings; any individual wells or septic tanks; and any material alteration of the landscaping or topography of the Premises, including without limitation any removal or substantial pruning of trees or plants. The listing of a category does not imply that such construction is permitted. This Declaration may, for example, prohibit all antennae, satellite dishes or receivers, in which event, such a prohibition shall control.

(b) Application. In order to proceed the applicant shall submit to the Architectural Review Committee three (3) sets of the construction documents (scale 1/8" or greater = 1'). Plans and specifications for all proposed work should specifically reflect therein the types of construction, the structural components, size, shape, height, dimensions, materials and colors of proposed improvement consisting of:

- (1) three (3) sets of the construction elevations of all proposed improvements;
- (2) three (3) sets of construction floor plans of all proposed levels; and
- (3) such other items as the Design Review Committee may reasonably require.

Applicant shall submit written justification, based on merit or hardship for, for any variance desired or requested. No modification, alteration or addition to any Unit shall be commenced except in accordance with plans and specifications that have been approved by the Design Review Committee.

Any modification to the approved plans and specifications must be reviewed and approved by separate application.

(c) Review Fee. Each Owner submitting plans for modification, alteration or addition to any Unit shall submit with such plans a payment of \$100 as a nonrefundable Review Fee and that payment shall be made to the Association; the Review Fees paid shall be used by the Association to defray the costs and expenses incurred by the Design Review Committee. Should the Design Review Committee reject, and/or require modifications or changes, to any plans and/or specifications due to deviations in said plans or specifications from the Design Guidelines, then and in that event the Owner who submitted said plans and specifications shall pay another Review Fee. The Design Review Committee shall have the discretion to waive any such additional Review Fees if, in its sole discretion, it determines that the deviations from the Urban Design Guidelines were minor.

(d) Basis for Design. Applications shall be approved or denied based upon compliance with the factors identified in Section 16.07.

(e) Uniform Procedures. The Design Review Committee shall establish procedures for the review and approval of applications.

(f) Notification: Construction. The Design Review Committee shall notify the applicant of its decision, in writing, within the time limits published pursuant to the procedures adopted under this Section 16.06. If approval is given in writing, construction of the improvements may begin. All construction must comply with the plans and specifications approved by the Design Review Committee.

(g) Enforcement. If any construction is begun which has not been approved in writing or which deviates from the approved plans, the Design Review Committee, Declarant, or the Community Association may bring an action for specific performance, declaratory judgment or injunction and shall be entitled to recover its actual attorney's fees in bringing such action. In addition, the remedies for lot maintenance shall apply.

15.05 Factors to be Considered. The Design Guidelines provide many, but not all, factors to be considered by the Design Review Committee in reviewing applications. Each Owner agrees and acknowledges that the Design Guidelines are not a complete listing and that in reviewing applications the Design Review Committee may consider such other factors as the Design Review Committee may in its sole discretion deem appropriate. In addition to compliance with this Declaration and the Design Guidelines, some additional factors to be considered during the review process shall be: (a) architectural style and design; (b) conformity with good design practices; (c) scale of the proposed improvements; (d) aesthetic use of materials and the resulting exterior appearance; (e) quality of workmanship and material; (f) color and location of buildings in relation to surrounding structures and topography; (g) avoidance of duplication of, or repetitive, designs; and (h) harmony of design with existing dwellings and other improvements.

15.06 Variances. The Design Review Committee shall have the right and power to grant variances from compliance with any provision of this Declaration or any provision in the Design Guidelines when, in the sole and absolute discretion of the Design Review Committee, circumstances such as topography, natural obstructions, substantial hardship, or economic, or environmental considerations, warrant a variance. All variances must be evidenced in writing from the Design Review Committee in order to have legal effect. A written approval from the Design Review Committee of plans and specifications for a proposed work that will not comply, in one or more respects, with the Design Guidelines or this Declaration, shall constitute a written

variance per se as to the specific matter of matters not in compliance, unless otherwise expressly stated therein.

If a variance is granted, no violation of this Declaration or the Design Guidelines, shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of any variance shall not operate to waive any of the terms and provisions of this act for any purposes except as to the particular instance covered by the variance, and in no case shall the granting of a variance in one instance obligate the Design Review Committee to grant a variance in another instance.

15.07 Limitations and Release of Liability. The purpose of the review of plans and specifications by the Design Review Committee is to protect and enhance the aesthetic and monetary values of the Premises and each Owner's Unit and to maximize compliance with the Declaration and the Design Guidelines for the benefit of all Owners. In performing its functions, the Design Review Committee does not warrant, guarantee, recommend, approve, certify or endorse any particular architectural, engineering or structural design, or any plan, specification, material, construction method or practice, as to its safety, freedom of defects, durability, fitness or suitability for intended use, strength or other characteristics.

Neither the approval by the Design Review Committee of any plans or specifications for any work nor any review, inspection, or observation of such work shall in any manner constitute a warranty, representation or the undertaking of any duty or obligation on the part of the Design Review Committee, the Community Association Board, the Community Association, Declarant or their respective members, agents, employees, partners and representatives, to any person, that any method, practice, design, materials or structure, contained, shown or specified in any plans or specifications approved by the Design Review Committee, or reviewed, inspected or observed by the Design Review Committee or its members: (a) is safe or proper or sound or free from defects or vices or is vested with any quality or characteristic whatsoever, (b) complies with the requirements of this Declaration and the Design Guidelines, (c) complies with the requirements of any contract, agreement or instrument, (d) complies with the requirements of any law, ordinance or regulation applicable to Owner's lot and/or the work which Owner proposes to have performed on the lot, or (e) does not create an encroachment on a utility easement for which permission must be obtained from those utilities using the utility easement.

Each person who submits plans and specifications to the Design Review Committee for a particular work, each Owner who performs or contracts for the performance of such work on any lot pursuant to such plans and specifications, and each architect, engineer, contractor, sub-contractor, supplier, material man or other person who participates or engages in any work on any lot pursuant to such plans and specifications, hereby fully releases and discharges the Design Review Committee, and its members, the Community Association Board and its members, the Association, Declarant, and their partners, their employees, agents and representatives, from all claims, demands, causes of action, suits, liabilities, damages, costs and fees arising out of any act or fault by any person, or any defect, vice, hazard or failure, in any material, lot or improvement, relating in any way to such work.

The Design Review Committee shall have the power and authority to reject any plans or specifications for any work that in the sole opinion of the Design Review Committee does not meet the requirements of this Declaration or the Design Guidelines, and any Owner whose plans or specifications have been so rejected does hereby fully release and discharge the Design

Review Committee and its members, the Community Association Board and its members, the Association, Declarant, and their officers, directors, employees, agents and representatives, from all claims, demands, causes of action, suits, liabilities, damages, costs and fees arising out of such rejection of plans or specifications, the opinion of the Design Review Committee being final and binding and not subject to any claim or challenge whatsoever. Should any Owner nevertheless make any claim or challenge to the rejection by the Design Review Committee of any plans or specifications, such Owner agrees to pay the actual attorneys fees, costs and expenses incurred by the Design Review Committee in defending or responding to such claim or challenge.

## ARTICLE SIXTEEN

### Miscellaneous

16.01 NOTICES: Any notice required to be sent to any Owner under the provisions of this Declaration or the By-Laws shall be deemed to have been properly sent if (i) mailed, postage prepared, to his or its last known address as it appears on the records of the Association at the time of such mailing, (ii) transmitted by facsimile or e-mail to his or its facsimile number or email address as either appears on the records of the Community Association at the time of such transmittal, or (iii) when personally delivered to his or its Unit. The date of mailing, or the date of transmission if the notice is sent by facsimile or e-mail, shall be deemed the date of service.

16.02 CAPTIONS: The Article and paragraph headings herein are intended for convenience only and shall not be construed with any substantive effect in this Declaration. In the event of any conflict between statements made in recitals to this Declaration and the provisions contained in the body of this Declaration, the provisions in the body of this Declaration shall govern.

16.03 SEVERABILITY: Invalidation of all or any portion of any of the easements, restrictions, covenants, conditions, or reservations, by legislation, judgment or court order shall in no way affect any other provisions of this Declaration which shall remain in full force and effect.

16.04 PERPETUITIES AND OTHER INVALIDITY: If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue for twenty-one (21) years after the death of the survivor of the living lawful descendants of Rulon C. Gardner, a current Manager of Declarant.

16.05 TITLE HOLDING LAND TRUST: In the event title to any Unit is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all Charges and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit. The amount of such lien or obligation shall continue to be a Charge or lien upon the Unit and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Unit.

16.06 ASSIGNMENT BY DECLARANT: All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure, or otherwise) shall hold or be entitled to exercise the rights of the Declarant hereunder as fully as if named as such party herein. No such successor assignee of the rights of the Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

*[Remainder of Page Intentionally Left Blank; Signature Page to Follow]*

IN WITNESS WHEREOF, the undersigned have executed this Declaration on the date first set forth above.

**GARDNER BTS PARK VILLAGE, LLC**

*Rulon C. Gardner*

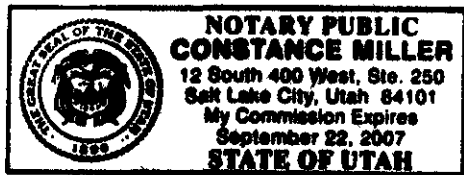
By: Rulon C. Gardner

Its: Manager

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

On this 16<sup>th</sup> day of July, 2007, before me personally appeared Rulon C. Gardner, known to me to be the Manager of Gardner BTS Park Village, LLC, the Utah limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said company, for the uses and purposes therein mentioned, and on oath stated that Gardner BTS Park Village, LLC was authorized to execute said instrument on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Signature: *Constance Miller*

Name (Print): Constance Miller

NOTARY PUBLIC in and for the State of Utah, residing at SALT LAKE  
My appointment expires: 9-22-2007

**EXHIBIT A**  
**The Development Area**



EXHIBIT B

The Premises

Phase 1

A parcel of land situated in the NE¼ of Section 3, Township 4 North, Range 2 West Salt Lake Base & Meridian, in Davis County, Utah. The Boundaries of said parcel of land are described as follows:

Beginning at a point 246.25 feet S.00°07'00"W. and 33.00 feet N.89°53'00"W. from the found Davis County brass cap marking the Northeast Corner of said Section 3, said point being the southeast lot corner of Lot 1 of the Dana'd F. Brown Subdivision, and the westerly right of way line of 1000 West Street; thence S.00°07'00"W. 248.78 feet along said westerly right of way line; thence N.89°56'05"W. 266.99 feet; thence N.89°58'13"W. 210.04 feet to the northeast corner of Lot 11 of the Westwood Estates Subdivision No. 1; thence N.89°56'05"W. 330.50 feet along a northerly line of said subdivision to the southeast corner of Lot 6 of said Westwood Estates Subdivision No. 1; thence N.00°03'55"E. 211.00 feet along a easterly line of said Westwood Estates Subdivision No. 1; thence S.89°56'05"E. 124.93 feet; thence N.00°03'55"E. 27.13 feet; thence S.89°56'05"E. 295.05 feet; thence N.00°03'55"E. 2.96 feet; thence S.89°56'09"E. 120.79 feet; thence N.00°03'47"W. 7.82 feet; thence S.89°56'05"E. 266.99 feet to the point of beginning.

12-693 -

The above described parcel of land contains 192,119 square feet or 4.410 acres in area, more or less.

Phase 2

A parcel of land situate in the NE¼ NE¼ of Section 3, Township 4 North, Range 2 West Salt Lake Base & Meridian, in Davis County, Utah. The Boundaries of said parcel of land are described as follows:

Beginning in the northerly section line of said Section 3 at a point 289.99 feet N.89°58'05"W. along the said northerly section line from the found Davis County brass cap marking the Northeast Corner of said Section 3, and running thence S.00°07'00"W. 246.22 feet along the westerly lot line of Lot 1 of the Dana'd F. Brown Subdivision, to the southwest corner of said Lot 1; thence S.00°03'47"E. 7.82 feet; thence N.89°56'09"W. 120.79 feet; thence S.00°03'51"W. 2.96 feet; thence N.89°56'05"W. 295.05 feet; thence S.00°03'55"W. 27.13 feet; thence N.89°56'05"W. 124.93 feet; thence N.00°03'55"E. 284.13 feet along a easterly line of Westwood Estates Subdivision to said Northerly Section line; thence S.89°56'05"E. 540.98 feet along said northerly section line to the point of beginning.

12-024-01228

The above described parcel of land contains 142,034 square feet or 3.267 acres in area, more or less.

EXHIBIT C

Site Plan

EXHIBIT D

Special Use and Occupancy Restrictions

EXHIBIT E

Park Village Design Guidelines

1. DESIGN GUIDELINES
  - a. *Garages:* All housing units within the development of the Property shall have a two-car garage.
  - b. *Residential Unit Requirements (one story w/ basement):* 1200 square feet of above grade, finished floor space.  
*Ramblers Requirements (unit w/no basement or two stories):* 1500 square feet of above grade, finished floor space. A residence without a basement shall be built with footing and foundation construction.
  - c. *Residential Unit Minimum Setbacks:* (1) Driveways: 18 feet in front of the garage as measured from the back of curb or back of sidewalk if sidewalk on that side; (2) side yard: a minimum of two (2) feet on the garage side of the lot and two (2) feet past the patio on patio side always maintaining a minimum separation of 10 feet between buildings. (3) rear yards: 15 feet; and (4) corner yards: 15 feet at the street side yard.
  - d. *Front Elevation / Rear Finish Requirements:* Front elevations shall include fifty percent (50%) of brick or hardboard. All side and rear exterior finishes may be brick, stucco, rock, or combinations thereof. Any stucco finishes shall not be installed using an exterior insulated finish systems (EIFS).