

**When Recorded Return To:**

Waverly Station Homeowners Assoc.  
308 E 4500 S, Suite 200  
Murray, UT 84107

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR WAVERLY STATION**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR WAVERLY STATION ("Declaration") is made this 26<sup>th</sup> day of September, 2006, by Waverly Station, L.L.C., a Utah limited liability company (the "Declarant").

**RECITALS**

A. The Declarant is the owner of certain Property (as defined herein) land located in the South Salt Lake City, Salt Lake County, Utah (the "County"), as shown on the Plat (as hereinafter defined), recorded among the Land Records of the County ("Land Records"). All the real property situated in Salt Lake County, Utah, which is more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference and any additional land that is annexed (the "Property") shall be subject this Declaration.

B. It is contemplated that the Property will be developed into a mixed-use community on the Property, including, single-family attached dwellings as well as residential and commercial condominiums, and common areas.

C. Declarant hereby declares that all of the real property within Waverly Station shall be held, sold, conveyed, encumbered, leased, used, occupied, and improved subject to these protective covenants, conditions, and restrictions. It is the intention of the Declarant in imposing these covenants, conditions, and restrictions to create a consistent pattern and quality of development, and to protect and enhance the property values and aesthetic values of the property, all for the mutual protection and benefit of the Owners of the Property. The covenants, conditions, and restrictions shall run with title to the Property and will be binding upon the Owners, their successors, assigns, heirs, lienholders, and any other person or entity holding any interest in the Property. The covenants, conditions, and restrictions shall be binding upon the Owners and Association (as such term is hereinafter defined), as well as its successors in interest and may be enforced by the Declarant, by the Association, or by any Owner.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS**

THAT the Declarant does hereby establish and impose upon the Property (as hereinafter defined), the Covenants for the benefit of and to be observed and enforced by the Declarant, its successors and assigns, as well as by all purchasers of Units, to wit:

**ARTICLE I****DEFINITIONS**

1. The following terms used in these covenants, conditions and restrictions shall be applicable to this Declaration and also to any supplemental declaration recorded pursuant to Article III hereof and are defined as follows:

1.1. "Association" shall mean and refer to the Waverly Station Homeowners Association, a non-profit corporation incorporated under the laws of the State of Utah, its successors and assigns.

1.2. "Commercial Units" shall mean and refer to the Units used for commercial and/or retail purposes.

1.3. "Common Areas" and "Common Facilities" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association, including, without limitation, a clubhouse with related facilities.

1.4. "Condominium Association" shall mean the governing body of a Condominium, which is created pursuant to a condominium declaration, by-laws and the articles of incorporation.

1.5. "Declarant" shall mean and refer to Waverly Station, L.L.C., its successors and assigns.

1.6. "Development Period" shall begin on the date of this Declaration and end on such date when all Units in the Property have been sold to and occupied by Owners or tenants and all other development and sales of the Property have been completed in the Property.

1.7. "Member" shall mean and refer to any person or entity that holds membership in the Association.

1.8. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title or condominium title to any Unit which is a part of the Property, including contract sellers and buyers, but excluding those having such interest merely as security for the performance of an obligation.

1.9. "Residential Unit" shall mean and refer to a Unit used for residential purposes.

1.10. "Unit" shall mean and refer to any recorded lot, townhome or condominium unit (including Commercial Units and Residential Units), as shown by the official plat of Waverly Station or as may be shown on subsequent plats of the Property recorded or intended to be recorded in the Office of the Recorder of Salt Lake County, Utah.

## ARTICLE II

### TERM AND DESIGNATION OF UNITS

2.1. Term of Declaration. This Declaration shall remain in full force for as long as the Property is used for residential and/or commercial purposes.

2.2. Designation of Unit. The Record of Survey Map has or will designate a Unit number and/or address for each Unit, whether it is a vacant building lot, single family attached townhome, condominium within a multi-Unit building or Commercial Building. The Unit designation shall be the legal description of the Unit and each Unit shall constitute a separate

parcel of real property which can be conveyed, mortgaged, taxed, and otherwise identified by the description "Unit Number - Waverly Station as it appears of record in the Office of the Salt Lake County Recorder, together with its appurtenant interest in the Common Area."

### ARTICLE III

#### ANNEXATION OF ADDITIONAL PROPERTY

3. Declarant hereby reserves the right, in its sole and absolute discretion to subject additional land to the provisions of the Declaration without the approval, assent or vote of the Association, any Owner or other party, providing and on condition that:

3.1. Prior to the Declarant conveying fee simple title to any additional land to any purchaser thereof, the fee simple title or right-of-way to the Common Areas shall be conveyed to the Association and included within such subsequent phase; free of any and all encumbrances or liens, except current real property taxes, which taxes shall be prorated to the date of conveyance, and except any easements, covenants, conditions, and restrictions then of record, including those set forth in this Declaration. The land which is planned to be annexed is described in Exhibit B, attached hereto.

3.2. Supplementary Declarations. A supplementary declaration of covenants, conditions and restrictions ("Supplementary Declaration"), describing the real property to be annexed shall be recorded for each subsequent condominium plat or phase by Declarant. The recordation of each supplementary Declaration shall constitute the annexation of the corresponding phase into the Association, making said real property subject to this Declaration and subject to functions, powers and jurisdiction of the Association, and thereafter all Owners of Units within said real property shall automatically be Members of the Association.

### ARTICLE IV

#### WAVERLY STATION HOMEOWNERS ASSOCIATION

4.1. Introduction. It is contemplated Waverly Station will be developed in multiple designated phases; specifically, the first phase will include forty-one (41) Units with associated common areas, as described in Exhibit "A", attached hereto and the future phase(s) will include the land described in a Supplementary Declaration, in accordance with Section 3.2. above. Waverly Station will include both residential and commercial uses.

4.2. Association Described. The Property shall be subject to this Declaration and all Units within the Property will have a membership in the Association. Every person or entity who is a record Owner of a fee or condominium interest in any Unit shall be a Member of the Association. The Members shall in addition be subject to the terms and provisions of the Articles of Incorporation and Bylaws of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership for each Unit owned; provided, however, the Commercial Units will have a total of ten (10) votes (based on 1 vote for each 1,400 square feet of the Commercial Units); provided, however, to the extent that any Commercial Unit is more or less than 1,400 square feet, then Declarant shall have the unilateral right to reassign the votes for the Commercial Units to the end and intent that each Commercial Unit containing approximately

1,400 square feet have one (1) vote to the extent practical (i.e., by rounding the square footage) and further, provided, that no more than ten (10) votes are allocated for all Commercial Units. Except as provided herein, no Unit shall have more than one membership representing all the Owners of the Unit. Membership shall not be separated from ownership of any Unit, and ownership of such Unit shall be the sole qualification for membership. In addition, for purposes of voting, each Condominium Association shall constitute a Delegate District. The president of the Condominium Association shall be the delegate of such Delegate District during his or her term of office as President; but each such president shall be entitled to designate a member of the board of trustees or directors of the Condominium Association to act as delegate during his or her term of office as President. The appointee to fill any vacancy in the office of president of any Condominium Association shall automatically become the appointed delegate of such Delegate District.

4.3. Trustees. The Association shall be governed by a Board of Trustees. There shall initially be three (3) trustees, but after the Development Period (or earlier if determined by Declarant), the Board shall be expanded to five (5) trustees. The trustees shall be elected by majority vote of the Owners as called for in the Declaration and Bylaws. Each trustee shall serve a two (2) year term, provided that the trustees shall continue to serve until their successors have been elected or replacements appointed. Terms shall be staggered, and the initial Board shall divide itself into terms of one (1) and two (2) years by drawing lots. As of the date of this Declaration, the Trustees are: John Aldous, David Irwin and Nick Mingo.

4.4. Design Review Committee. The trustees of the Association have appointed a Design Review Committee consisting of at least three members, who are responsible for reviewing any requests by Owners to modify the external appearance of any Unit or building within the Property, to construct any fixture within the Common Areas, or to take any actions which, under the terms of this Declaration, require the approval of the Design Review Committee. The initial members of the Committee are John Aldous, David Irwin and Nick Mingo. Effort will be made to appoint members of the Design Review Committee who have knowledge and experience in one or more of the fields of architecture, civil engineering, real estate, or law. Members of the Design Review Committee will serve at the will of the Board of Trustees for such terms as the Board of Trustees deems appropriate.

4.4.1. No structure (other than construction or development by, for or under contract with Declarant) shall be constructed on any Unit nor shall any addition (including awnings and screens), change, or alteration therein or thereto (including any retreatment by painting or otherwise of any exterior part thereof unless the original color and material are used) (collectively, "Alterations") be made to the exterior of any Unit and/or contour of any Unit, nor shall any work be commenced or performed which may result in a change of the exterior appearance of any structure until the plans and specifications, in duplicate, showing the nature, kind, shape, dimensions, material, floor plans, color scheme, location, proposed topographical changes, together with the estimated costs of said Alterations or construction, the proposed construction schedule, and a designation of the party or parties to perform the work, have been submitted to and approved in writing by the Design Review Committee, its successors and assigns, and until all necessary permits and any other governmental or quasi-governmental approvals have been obtained. The approval of the Design Review Committee of any structure or Alterations shall in no way be deemed to relieve the Owner of any Unit from its obligation to obtain any and all permits and approvals necessary for such structure or Alterations. The Design Review Committee shall consider applications for

approval of plans, specifications, etc., upon the basis of conformity with this Declaration and applicable law and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors: the quality of workmanship; nature and durability of materials; harmony of external design with existing structures; choice of colors; changes in topography, grade elevations and/or drainage; the ability of the party or parties designated by the Owner to complete the structure or Alterations proposed in accordance with this Declaration, including, without limiting the foregoing, such factors as background, experience, skill, quality of workmanship, financial ability; factors of public health and safety; the effect of the proposed structure or Alterations on the use, enjoyment and value of other neighboring properties, and/or on the outlook or view from adjacent or neighboring properties; and the suitability of the proposed structure or Alterations with the general aesthetic appearance of the surrounding area. The Design Review Committee shall have the right to refuse to approve any such plans or specifications, including grading and location plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information as may be required by the Design Review Committee from time to time shall be submitted to the Architectural Review Committee by registered or certified mail or in person. In the event the Design Review Committee fails to approve or disapprove any plans within sixty (60) days of receipt thereof, such plans shall be deemed approved. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Design Review Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. The Design Review Committee shall have the right to charge a processing fee, not in excess of Fifty Dollars (\$50.00) for such requests, which shall be retained by the Association and not the Design Review Committee.

Construction of Alterations in accordance with plans and specifications approved by the Design Review Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date of approval and completed within twelve (12) months of commencement of the Alterations, or within such other period as the Design Review Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Design Review Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. After construction, all structures and Alterations shall be maintained continuously in strict conformity with the plans and specifications so approved and all applicable laws.

If any structure is altered, erected, placed or maintained on any Unit other than in accordance with approved plans and specifications therefor and applicable law, such action shall be deemed to be a violation of the provisions of this Declaration and, promptly after the Association gives written notice thereof to its Owner, such structure shall be removed or restored to its condition prior to such action, and such use shall cease, so as to terminate such violation. If within thirty (30) days after having been given such notice, such Owner has not taken reasonable steps to terminate such violation, any agent of the Association may enter upon such Unit and take such steps as are reasonably necessary to terminate such violation. Such Owner shall be personally liable to the Association for the cost thereof, to the same extent as he is liable for an Assessment levied against such Unit, and, upon the failure of the Owner to pay such cost within ten (10) days after such Owner's receipt of written demand therefor from the Association, the Association may establish a lien therefor upon such Unit in accordance with and subject to the provisions of this Declaration

applicable to an assessment lien. Further, any member of the Design Review Committee, upon the occurrence of a violation of the provisions of this Declaration, and after the Association or the Design Review Committee gives written notice thereof to the Owner of the applicable Unit, at any reasonable time, may enter upon and inspect any Unit thereon to ascertain whether the maintenance, construction or alteration of such structure or Alteration are in accordance with the provisions hereof. All structures or Alterations shall be made, constructed and maintained, and all activities on a Unit shall be undertaken, in conformance with all applicable laws and ordinances, including without limiting the generality of the foregoing, all zoning and land use ordinances.

4.4. Transfer of Membership. The membership held by an Owner of a Unit shall not be transferred, pledged, or alienated in any way except upon the sale of such Unit. Any attempt to make a prohibited transfer is void and shall not be reflected on the books of the Association. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of said Unit, the Association shall have the right to record the transfer of membership in the books of the Association.

4.5. Voting and Voting Rights. The Association shall have two classes of voting membership:

4.5.1. Class A. Class A members shall be all Owners, with the exception of the Declarant. Class A members who own Residential Units shall be entitled to one (1) vote for each Residential Unit in which they hold the interest required for membership as described in Article 4.2. Owners of Commercial Units shall be entitled to the number of votes described in Article 4.2. When more than one person holds such interest in any Unit, all such persons or entities shall be members. The vote for such a Unit shall be exercised as the multiple Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Unit. In the event the multiple Owners cannot agree on how to cast their vote, no vote will be accepted for that Unit although the Owners may be counted for the purpose of establishing a quorum. When one of multiple Owners is present at the meeting, that person shall be deemed to be acting with the authority of all of the Owners of that Unit unless written objection to the contrary has been received.

4.5.2. Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to four (4) votes for each Residential Unit in which it holds the interest required for membership by Article 4.2. and for Commercial Units, four (4) times the number of votes allocated for each such Commercial Unit under Article 4.2. owned by Declarant. Class B membership shall cease to exist on the expiration of the Development Period.

4.6. Enforcement Powers. The Association shall have the power to enforce the provisions of this Declaration by actions in law or equity brought in its own name and the power to retain professional services needed for the enforcement of the provisions of this Declaration and to incur expenses for that purpose. The trustees of the Association shall have the authority to compromise claims and litigation on behalf of the Association resulting from the enforcement of the provisions of this Declaration or the other exercise of its powers. The trustees of the Association shall have the exclusive right to initiate enforcement actions in the name of the Association; however, this shall not limit the rights of individual Owners to personally enforce these covenants in their own name. The trustees of the Association may appear and represent the interests of the Association at all public meetings concerning any matter of general application and interest to the Members.

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4.7. Maintenance Responsibilities. The Association shall be responsible for the maintenance of all Common Areas located outside of the Units, unless otherwise specifically stated in this Declaration. The Association will own or be granted easements over areas designated as Common Areas as follows.

4.7.1. Common Areas. Common Areas shall include all lands not otherwise designated as private property, or dedicated as public roads. Common Areas shall mean and refer to those areas land, sometimes designated on the Plat as "Common Area," intended to be devoted to the common use and enjoyment of the owners of the Units, including but not limited to reserved open spaces, maintenance areas, tot lots, non-tidal wetlands, recreational areas with any improvements located thereon, steep slopes, private streets, parking areas, storm water detention facilities, and any other real property or other facilities which the Association owns and/or in which the Association acquires a right of use for the benefit of the Association and its members, saving and excepting, however, so much of the land previously conveyed or to be conveyed to a governmental body. Also included as Common Areas will be utility lines which serve more than one Unit, including water, power, and gas lines upstream from individual Unit meters and to the extent that these lines are not owned by the utility company, all wires, pipes, conduits, or other utility equipment up until the point at which the utility line enters a Unit, or passes to the Owner's side of a meter, or splits to serve only one Unit. Common Areas are further defined in Exhibit A to this Declaration and in corresponding attachments to any supplemental declarations of covenants for any subsequent phases of Waverly Station.

4.8. Ownership and Use of Common Areas

4.8.1. The Common Areas which are intended to be owned by the Association shall be conveyed by Declarant at such time as Declarant deems appropriate.

4.8.2. The use of the Common Areas will be available to Declarant and all Owners as well as to their respective guests and invitees.

4.9. Common Areas Assessments. The trustees of the Association have the power to levy assessments ("Common Areas Assessments") for the operation of the Common Areas. The Common Areas Assessments shall be for building maintenance, operations, reserves, repairs, insurance, utilities, snow removal, maintenance and repairs of walkways, and private roads, any recreation facilities (including clubhouse and related amenities), landscaping, professional services, costs of high-speed internet access, and television service (all as more fully provided by separate written agreement between the provider and the Association and also described in Article 11.9. herein) and any other items which may be authorized by this Declaration or by an approval vote of fifty-one percent (51%) of the Owners. The Common Areas Assessment will be levied on an annual basis, in advance. Unless the trustees vote to require otherwise, assessments will be paid in equal monthly installments. The Common Areas Assessments will be used to fulfill the maintenance obligations of the Association, which are described in Section 4.14. below.

4.9.1. Special Assessments. The trustees of the Association have the authority to levy special assessments as necessary to cover shortfalls in the budget or unanticipated expenses. So long as the special assessment (or the sum of all special assessments in the current operating year) is no greater than ten percent (10%) of the currently approved budget, the trustees may

adopt a special assessment without a meeting of the Owners. If the special assessment (or sum of all prior special assessments in the current operating year) exceeds ten percent (10%) of the current budget, a special meeting of Owners will be called, and the purposes and amounts of the special assessments submitted for the approval of a simple majority vote of the quorum present at such meeting.

4.9.2. Initial Monthly Assessment. The initial monthly assessment for all Unit Owners shall be paid to the Association and shall become effective upon an Owner's purchase of the Unit which has a use and occupancy permit; provided, however, the assessments due from the Owner of the Commercial Units shall commence at such time as the Commercial Unit is occupied by tenants (and shall continue thereafter despite whether there is any occupancy of the Commercial Unit); and further, provided, the monthly assessment due from the Owner of the Commercial Unit shall be calculated pro rata based on actual occupancy of all Commercial Units..

The monthly assessment shall be adjusted on an annual basis as otherwise provided for in this Declaration, including, but not limited to, any additional amount to be paid by each Unit Owner in return for the right to use and enjoy the amenities and any recreational facilities within the Property by the Unit Owners and their guests for no extra charge. Failure to pay this monthly assessment may result in the Association filing a lien against the non-paying Owner's Unit. Moreover, the Association may suspend the right to use and enjoy the amenities and facilities by a non-paying Owner and their guests for any period during which any portion of the monthly assessment of such Owner's Unit remains unpaid. The assessments to be paid to the Association shall be calculated as follows: Initially, each Owner of a Residential Unit shall pay the sum of One Hundred Thirty Six Dollars (\$136.00). For Commercial Units, each fourteen hundred (1,400) square feet of the Commercial Units shall be subject to the assessment amount that would apply to one (1) Residential Unit. The monthly assessment includes a portion to be retained by the Association for reserve funding.

4.9.3. Assessment Exemption for Declarant. Notwithstanding anything contained herein, Declarant shall be exempt from any type of assessment payment for any Unit owned by Declarant.

4.10. Budget. Commencing with the first fiscal year of the Association, the Board of Trustees shall determine the amount of the Common Areas Assessments annually, but may do so at more frequent intervals should circumstances so require.

The Board of Trustees shall prepare, or cause the preparation of an annual operating budget for the Association, which shall provide, without limitation, for the management, operation and Common Areas and for payment those amounts due to Elsinore Agreement, as described in Article 11.9. hereof. The Board of Trustees of the Association shall make reasonable efforts to fix the amount of the annual Common Areas Assessment against each Unit for each assessment period at least thirty (30) days in advance of the beginning of such period and shall, at that time, prepare a roster of the Units and the annual Common Areas Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board of Trustees. Written notice of the annual Common Areas Assessments shall thereupon be sent to all Owners. The omission by the Board of Trustees, before the expiration of any assessment period, to fix the amount of the



annual Common Areas Assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Owner from the obligation to pay the annual Common Areas Assessment, or any installment thereof, for that or any subsequent assessment period; but the annual Common Areas Assessment fixed for the preceding period shall continue until a new Common Areas Assessment is fixed. No Owner may exempt itself from liability for Common Areas Assessments by abandonment of any Unit owned by such Owner or by the abandonment of such Owner's right to the use and enjoyment of the Common Areas.

4.11. Assessments Constitute Lien. Any validly imposed assessment by the Association shall constitute a lien against the Unit. The Association shall have the right to foreclose on that lien when any assessment remains unpaid for a period of more than ninety (90) days from the date the assessment was levied. However, if the lien is not foreclosed upon, it may be renewed from year to year by recording a new notice of lien, together with accumulated interest. The Association's lien shall have priority from the date of the first notice of interest on a specific Unit is recorded in the office of the Salt Lake County Recorder. This lien is subordinate to any previously recorded liens or encumbrances filed against that Unit, specifically including any purchase money mortgage or trust deed. Notwithstanding the Association's lien rights, the obligation to pay the assessments is a personal obligation of the Owner of each Unit, and the Association may proceed to collect against the Owner, or the prior Owner of any Unit in the event of a sale. No mortgagee or beneficiary under a trust deed who takes title to a Unit by foreclosure or non-judicial sale shall be held liable for unpaid assessments of the Owner whose Unit was acquired by the mortgagee or beneficiary under a trust deed.

4.12. Statement of Account. Any Owner may request the Association to provide a statement of an account to any lender or prospective buyer of that Unit showing the assessments to be paid in full, or the amount of any past assessments. The buyer or lender for whom such statement was prepared will be entitled to rely on its accuracy and will not be held liable for any amounts not shown on the Statement

4.13. Common Services and Expenses. The following items of maintenance and operating expenses will be paid through the Association as Common Areas expenses by all Owners within the Property.

4.13.1. Maintenance and repair of the private roads, trails and walkways within Common Areas, maintenance, repair and operation of Common Areas and Common Facilities, and maintenance and repair of any other Association improvements as determined by the Board of Trustees;

4.13.2. Liability insurance on Common Areas, common recreation equipment, and any insurance on officers and trustees of the Association;

4.13.3. Maintenance and repair of Common Areas, landscaping and maintenance of privately-owned front and rear yards, and open space to include irrigation, mowing (if any), landscaping, weed control, algae control, picnic or playground equipment maintenance and other maintenance as determined by the Board of Trustees;

4.13.4. Utility charges for lighting, irrigation, or other utilities used in conjunction with Common Areas;

4.13.5. Project administrative costs, including postage, office expenses, bookkeeping, accounting, legal and other professional services.

4.13.6. Costs of high-speed internet access, television service, provided to the Units (all as more fully provided by separate written agreement between the provider and the Association);

4.13.7. Cost of domestic and irrigation water to the Units;

4.13.8. Any other items of Common Areas expense as required by law; and

4.13.9. Garbage collection fees.

The Board of Trustees is authorized to hire property management service providers and enter into management agreements and collect the costs of such management services as part of the Common Expenses.

4.14. Individual Owners will be responsible for the upkeep, maintenance, and repair of all exterior Unit surfaces not specifically authorized for maintenance by the Association. All interior maintenance of all Units will be the sole responsibility of the individual Unit Owner. Specifically, Unit Owners will make no modifications to the interior structure of any Unit having one or more common walls with any other Unit, without the express written consent of the Board of Trustees and the Design Review Committee. The following items are the responsibility of the Owner for his or her Unit and will not be paid for as Common Area expenses.

4.14.1. Other than as set forth herein, utility costs for the Unit including electrical, gas, telephone, sewer service, and other utility services or similar charges related to the use and occupation of the Unit.

4.14.2. Interior maintenance and repairs, including paint, floor coverings, fireplaces and flues, furnaces, water heaters and other mechanical equipment and appliances, non-load bearing walls, all drywall, ceilings, interior doors, glass replacement on exterior windows, garage floor flatwork, garage door operations, automatic garage door openers and damage to garage doors, and any other equipment, devices, or appliances installed by Owners.

4.14.3. Other items of maintenance and repair not specifically identified as the responsibility of the Association in this Declaration.

4.15. Collection of Assessments. For any Units located within a Condominium Association, each such Condominium Association shall have responsibility for collecting Common Areas Assessments and any Special Assessments on behalf of the Association due from those Units. Each Condominium Association shall deliver the Common Areas Assessments (and Special Assessments, if applicable) to the Association on the due date. Any Common Areas Assessments or Special Assessments collected by the Condominium Association shall be held in trust for the benefit of the Association. The budget of the Condominium Association shall include a line item for Common Areas Assessments and any Special Assessments. If the Condominium Association fails to pay Common Areas Assessments or Special Assessments to the Association when due, and in accordance with the provisions of any guidelines established by the Board of Trustees, the Board of Trustees may bring an action against the Condominium

Association and/or delinquent Owner and all costs of enforcement shall be levied as an assessment against the Condominium Association and/or delinquent Owner. The Board of Trustees may, upon a vote by a majority of the trustees, elect to terminate the obligation of the Condominium Association to collect the Common Areas Assessments and/or Special Assessments.

4.16. Each Owner covenants with the Association and with other Owners that he or she will maintain his or her Unit. In the event that a Owner fails to maintain his or her Unit, and as a result of this failure there is a condition which is dangerous, unsightly, unhealthy, unsanitary, or which constitutes a nuisance, the Association may make necessary repairs or carry out the necessary maintenance and file a lien against the Unit for the reasonable costs of such repairs or maintenance. Prior to exercising this right to maintain, the Association will give the Owner written notice and the Owner will have fifteen days to commence repairs or maintenance. If the Owner has not commenced repair or maintenance, or fails to pursue repairs or maintenance with reasonable diligence, the Association may enter and complete repair or perform the maintenance deemed necessary or abate the nuisance at the Owner's expense. In the alternative, the Association or any other Owner may bring an action to cause the Unit Owner to perform all necessary maintenance and repairs and the Association or any other Owner may recover any judgments for any maintenance or repairs performed and may execute any lien or judgment against the Unit and or Unit Owner.

4.17. The Association may, by the affirmative vote of a simple majority of the Owners, decide to have some of the enumerated obligations of the Owners, or other services, taken over by the Association as Common Areas expenses from time to time in order to achieve cost savings, convenience to the Owners, or attainment of a desired level of maintenance within the Property.

4.18. Easements. Declarant and trustees shall have the right to grant easements to appropriate parties for utilities and use any of the Common Areas for public, or quasi-public purposes, including, without limitation, for purposes of installation and operation and maintenance of fiber optic cable to provide internet, television and telephone services .

4.19. Insurance. The Association will maintain such policies of insurance as the trustees deem necessary for the purposes and protection of the Association and the Owners, in such amounts as are customary and commercially reasonable for projects of this type and scale. At a minimum, the Association will meet the following criteria.

4.19.1. Hazard Insurance. The Association will maintain multi-peril type insurance covering any Common Areas. This policy shall be equal to the entire replacement cost of the structure(s) as determined by the trustees and insurance carrier(s). Such policy will cover losses by fire and other such hazards covered by the standard extended coverage endorsement, and debris removal, demolition, damage by vandalism, malicious mischief, windstorm, hail, water damage (excluding flood insurance), and such other risks as are customarily covered in similar projects in this area.

4.19.2. Insured Party. The named insured will be the Association, or its authorized representative, for the use and benefit of the individual Owners as their interests might appear.

4.19.3. Mortgagee Clause. Each such policy will include a standard mortgagee clause, without contribution, which shall be either endorsed to provide that any proceeds are payable to the Association for the use and benefit of the mortgagees, as their interests may appear, or shall be endorsed to fully protect the interests of the mortgagees. Further, the policy shall require thirty days written notice to the mortgagees in the event of a cancellation, reduction in coverage, or non-renewal.

4.19.4. Right to Restore. Each policy shall contain a provision that notwithstanding anything in the policy that gives the carrier the right to restore any damaged structures rather than to make a cash settlement, such right will not be exercised without the express written consent of the Association.

4.19.5. Liability Insurance. The Association will maintain a comprehensive public liability insurance policy covering all Common Areas and Common Facilities. Such insurance will maintain a severability of interest endorsement or its equivalent which shall preclude the insurer from denying the claim of one Owner due to the negligence of other Owners, the Association, or trustees. The coverage will include coverage for non-owned automobiles, damage to the property of third parties, and such other liability exposures as are reasonable and customary for projects of this type. The limits of liability shall be not less than One Million Dollars for all claims arising from a single occurrence.

4.19.6. Workers Compensation. The Association will maintain workers compensation insurance for any employees and if available at reasonable cost, for trustees, and may require or purchase fidelity bonds for persons handling Association funds.

4.20. Property and Casualty Insurance. The Owners are solely responsible for property and casualty insurance on the contents of their Units and any improvements to their Units. Additionally, Owners of both attached and detached residential Units not sharing one or more common walls with any other Unit shall be responsible for maintaining any multi-peril type hazard insurance on their own Unit.. Unit Owners covenant to hold the Association harmless for any such claims.

## ARTICLE V

### RESTRICTIONS ON THE USE OF UNITS AND COMMON AREAS

5.1 The use and occupancy of the Units is expressly subject to the covenants, conditions and, restrictions expressed in this Declaration and the restrictions enumerated below.

(a) Zoning Regulations. The zoning regulations of Salt Lake County and any building, fire, and health codes are in full force and effect within the Property and no Unit may be occupied or used in a manner which is inconsistent with these regulations or with any statute, law, ordinance, covenant, or conditional use permit.

(b) No Mining Uses. The Property shall be used for residential, and neighborhood retail/commercial use only and no surface occupation for mining, drilling, or quarrying activity will be permitted at any time.

(c) Commercial Uses. Other than as set forth in this Declaration, no Residential Unit may be used for commercial uses. Notwithstanding the foregoing provisions, Declarant

may maintain sales offices, model homes and trailers during the Development Period on the Property.

(d) Restrictions on Signs. No signs will be permitted on any Unit not zoned and designated for commercial uses, except for signs warning of some immediate danger, which signs shall comply with county regulations and will not exceed six (6) square feet in size. Signs within the area(s) zoned and designated for commercial uses will be of a size and a type to be approved on an individual basis by the Declarant or the Design Review Committee. During the Development Period, no signs advertising a Unit for resale or rental shall be placed on or within any Unit such that the sign is visible from exterior of the Unit, nor shall any signs advertising a Unit for resale be placed anywhere within the Property, but rather all such advertising shall be done off-site (i.e., outside of the Property) by means of the multiple listing service, print media, etc. Nevertheless, the above restrictions shall not apply to the Declarant nor shall this provision apply to the commercial space or Commercial Units.

(e) Completion Required Before Occupancy. No Unit may be occupied prior to its completion and the issuance of a certificate of occupancy by South Salt Lake City.

(f) Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Property are to be underground. No propane tanks or oil tanks may be installed within the Property except for temporary heat during construction.

(g) Maintenance of Property. All Units shall be maintained in a clean, sanitary, attractive and marketable condition at all times by the Owner. No Owner shall permit his Unit to fall into disrepair.

(h) No Noxious or Offensive Activities. No noxious or offensive activity shall be carried out in any Unit or on any portion of the Property including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of neighboring or other Units.

(i) No Hazardous Activity. No hazardous activity may be conducted within any Unit or within the Property that is or would be considered by a reasonable person to be dangerous or hazardous to others, or which would cause the cancellation of conventional property casualty insurance. This includes, but is not limited to, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting of open fires (other than properly supervised and contained barbecues). No Owner or Member will occupy any Unit in a manner that is in violation of any federal, state or local law or regulation concerning the storage, disposal, or use of hazardous or toxic materials.

(j) No Open Burning. No open burning of yard trimmings, construction wastes, or other materials will be permitted within the Property without specific prior written consent of the Board of Trustees.

(k) Vehicles Restricted to Roadways. No motor vehicles may be operated on the Property except on improved roadways and driveways, except during periods of construction by construction vehicles. No snowmobiles, unregistered motorcycles, golf carts, all-terrain vehicles or other such off-road vehicles may be operated within the Property except during periods of

actual loading or unloading for transport to or from a Unit. Such vehicles will not be repaired, maintained, kept or stored outside of a Unit or on the Common Areas. This Section 5.1. (k) shall not apply to the Declarant during the Development Period.

(l) No Automobile Repair. No automobile repair or restoration work may be made within the Property, except that minor routine repairs made to an automobile within an enclosed garage is permissible. No inoperative automobiles may be stored outside of any Unit.

(m) Pets. No kennel or dog run may be placed anywhere within the Property, provided, however, each Residential Unit may have no more than two dogs or two cats if kept for non-commercial purposes and further, provided, that the Association may require an Owner to remove nuisance pets due to noise, running at large, sanitary violations or other violations of such rules as may be established by the Association. In addition, only seeing-eye dogs are permitted in Commercial Units.

(n) Firearms or Weapons. No firearms or weapons of any kind including BB Guns, pellet guns, pistols, rifles, etc. may be discharged within the Property at any time. No archery ranges or other weapons target areas or use is permitted.

(o) Antennas. No radio aerial, antenna or satellite or other signal receiving dish, or other aerial or antenna for reception or transmission, shall be placed or kept on or about the Unit (including on the patio or balcony of such Unit); provided, however, in the event such prohibition is not enforceable by applicable law, then the following shall apply:

(i) An Owner may install, maintain and use on or about its Unit or patio or balcony (if applicable), one (or, if approved, more than one) Small Antenna (as hereinafter defined) in an inconspicuous location, where the Small Antenna is screened from view from other Units in such a manner as is approved by the Design Review Committee of the Association in accordance with the provisions herein. Notwithstanding the foregoing terms of this subsection, (a) if the requirement that a Small Antenna installed on or about a Unit or patio/balcony be placed in an inconspicuous location would impair such Small Antenna's installation, maintenance or use, then it may be installed, maintained and used at another approved location for said Unit where such installation, maintenance or use would not be impaired, and (b) if the prohibition against installing, maintaining and using more than one (1) Small Antenna on or about a Unit would result in any such impairment, then such Owner may install additional Small Antennae as are needed to prevent such impairment (but such installation shall otherwise be made in accordance with this subsection).

(ii) In determining whether to grant any approval pursuant to this Section 5.1. (o)(i), the Design Review Committee shall not withhold such approval, or grant it subject to any condition, if and to the extent that doing so would result in an impairment.

(iii) As used herein, (a) "impair" has the meaning given it in 47 Code of Federal Regulations Part 1, section 1.4000, as hereafter amended; and (b) "Small Antenna" means any antenna (and accompanying mast, if any) of a type, the impairment of the installation, maintenance or use of which is the subject of such regulation. Such antennae are currently defined thereunder as, generally, being one (1) meter or less in diameter or diagonal measurement and designed to receive certain types of broadcast or other distribution services or

programming.

(p) Additions and Alterations. No Unit Owner may construct additions to finished Units (including, without limitation, spas or hot tubs, storage sheds, and other external features), nor alter the external appearance of any Unit without the prior written approval of the Design Review Committee. Any such external features must be located and visually screened in a manner approved in advance by the Design Review Committee which utilizes berming, excavation, placement, vegetation, natural stone and/or other landscaping or visual screening methods, so that the external features and any modifications of the external appearance are in harmony with the overall landscaping and appearance of the Property. This Section 5.1. (p) shall not apply to the Commercial Units; provided, however, nothing can be done by any Owner of a Commercial Unit which affects the exterior of any building containing Commercial Units without obtaining written approval of the Design Review Committee..

(q) No Unsightliness. No unsightliness is permitted on any Unit or anywhere within the Property. This shall include, without limitation: the open storage of any building materials, except during the construction of any dwelling or improvements; the open storage or parking of farm or construction equipment, inoperable motor vehicles, boats, campers, trailers, snowmobiles, ATV's or other recreational vehicles, and trucks larger than pick-up trucks, except during periods of actual loading and unloading; accumulations or storage of construction debris or waste; accumulations or storage of household refuse or garbage, except as stored in tight containers in an enclosure such as a garbage can; the open storage of lawn or garden furniture, except during season of use; and the storage or accumulation of any other material, vehicle, or equipment on the Unit or anywhere within the Property in a manner that is visible from the public view or from another Unit.

(r) No Annoying Lights. Any outdoor lighting shall be subject to approval by the Design Review Committee, and no outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the confines of the Unit or building on which it is installed. This shall not apply to any street lighting maintained by South Salt Lake City.

(s) No Annoying Sounds. No speakers or other noise making devices may be used or maintained on any Unit which create noise that might reasonably be expected to be unreasonably or annoyingly loud from adjoining Units, except for security or fire alarms.

(t) No Hunting. The hunting, trapping, and harassment of wildlife by firearms or any other means is expressly prohibited within the Property.

(u) Window Coverings. No Unit windows may be covered by sheets or other type of materials. All windows shall have appropriate window coverings installed within thirty (30) days of occupancy of such Unit.

(v) Leasing and Occupancy of Units. All lease agreements with respect to any Unit shall be in writing and submitted to the Board of Trustees of the Association for approval, which shall not be unreasonably withheld. The minimum term of all lease agreements shall be for one (1) year, and shall state that the lease agreement shall be subject to this Declaration. Owners of any Units leased must provide a current address and telephone number(s) to the Association. Further, no more than ten percent (10%) of any Residential Units that have use and occupancy

permits may be leased at any particular time and the Association shall have the responsibility to monitor the ten percent (10%) limitation and take enforcement actions if necessary to insure compliance, including, without limitation, the enforcement actions described in Article IX herein. Each Residential Unit shall be occupied by its Owner unless such Residential Unit is permitted to be leased under the provisions of this Paragraph. This Paragraph (v) shall be inapplicable to any Unit owned by Declarant.

## ARTICLE VI

### AMENDMENT

6. This Declaration may be amended from time to time by the affirmative vote of fifty-one percent (51%) or more of the Members subject to the following limitations.

6.1. Declarant Rights. No amendment shall have the effect of eliminating or changing the rights of the Declarant without its consent.

6.2. Mortgagee Consent. No amendment that materially affects the nature of ownership of any Unit or eliminates the provision of Article VII below will be effected. No amendment will be binding upon the holder of any mortgage or trust deed on any Unit unless the mortgage or trust deed holder joins in the amendment.

6.3. Amendment in Writing. Any amendment must be in writing and be properly recorded in the office of the Salt Lake County Recorder.

6.4. No Repeal. This Declaration may not be repealed by amendment.

6.5. Duration. This Declaration shall run with the Property and shall be binding for a period of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each unless and until an instrument has been recorded, by which this Declaration, in whole or in part, is amended or modified pursuant to the provisions hereof.

## ARTICLE VII

### MORTGAGEE PROTECTION

7. To facilitate financing for the Units, the following provisions for the protection of mortgagees shall apply.

7.1. Subordination of Lien. The Association hereby subordinates its lien for Common Areas Assessments to the first lien purchase money on any Unit. In the event that a mortgagee takes title to any Unit through trustee's sale, foreclosure or deed in lieu of foreclosure or sale, the Association will waive the right to lien for accrued but unpaid Common Areas Assessments. The mortgagee will take title free of lien for unpaid Common Areas Assessments accrued prior to the date of possession. The mortgagee in possession will, however, be subject to the Common Areas expenses accruing from the date it takes possession.

7.2. Statement of Account. The Association will give any Owner, prospective purchaser, or mortgagee or prospective mortgagee a written statement of account for the Unit in question showing the balance owing, if any, for Common Areas assessments. The Association



may charge a fee of Twenty-Five Dollars (\$25.00) for each such statement of account to cover its costs of preparation. Prospective purchasers and mortgagees may rely on the accuracy of such a statement and amounts not shown will be deemed to have been waived by the Association as to the new Owner or mortgagee.

7.3. No Release of Prior Owner. The obligation to pay Common Areas Assessments is personal and despite subordination or waiver for the benefit of a new Owner or mortgagee, the Association may reserve its rights to proceed against the prior Owner to collect any amounts due.

## ARTICLE VIII

### DESTRUCTION OR TERMINATION OF PROJECT

8. In the event of damage or destruction of the Property, or if the Owners elect to terminate the development of the Property, the following provisions shall apply.

8.1. Damage. In the event of damage to the Common Areas of the Property, the Association will make proof of loss with the insurance carrier, and supervise the application of insurance proceeds to the repair of the damage.

8.2. Destruction. If the damage to the Property is such that the costs of repair exceed more than seventy-five percent (75%) of its market value, or the damage has caused material and substantial damage to more than fifty percent (50%) of the Units, the Association shall convene a special meeting of the Owners as soon as possible for the purpose of determining the future of the Property. At the special meeting, the trustees will present the Owners with the best estimates available of the extent of the damage, the cost of reconstruction, and the market values. Such information may be preliminary in nature. After consultation with the Association, a vote will then be taken to determine whether the trustees shall (i) proceed with the settlement of insurance claims and repair and reconstruct the Property and improvements thereon, or (ii) terminate the development of the Property pursuant to this Declaration. Unless either alternative is approved by a vote of seventy-five percent (75%) of the undivided Common Areas ownership (excluding any un-constructed Units owned by Declarant), the trustees will postpone the decision for a time not to exceed ninety days to provide additional information on the relative costs and values. At that time, an additional vote will be taken, and the Property will be repaired unless the vote is at least seventy-five percent (75%) in favor of termination.

8.3. Partial Termination. If the destruction is such that it has been confined to specific areas of the Property, such that some Units and Common Areas are substantially unaffected, while other areas are substantially destroyed, the trustees may recommend that Owners vote on an amendment to the Declaration and Record of Survey Map that calls for termination of the development of the Property pursuant to this Declaration as to those Units and Common Areas that were destroyed, and leaves the portion of the Property that was undamaged, or not substantially damaged subject to this Declaration

8.4. Effect of Termination. Upon a vote of the Owners to terminate the development and maintenance of the Property pursuant to this Declaration, the trustees will prepare and execute such amendments to the Declaration and Record of Survey Map as necessary to carry out the will of the Owners. The Owners of the Units in the terminated portion of the Property will then be tenants in common in the ownership of the land, each in proportion

to his or her proportionate undivided interest. No Owner will be entitled to a distribution of land, but rather the trustees will hold the land for the benefit of all of the Owners until it is liquidated. Insurance proceeds will first be applied to clearing the site and removing hazardous conditions, then to paying the costs of liquidation, and finally, distributed to the Owners in proportion to their interests. If the development of less than all of the Property pursuant to this Declaration is terminated, Owners in the remaining portion of the Property will have no right to any of the insurance proceeds or process from the liquidation of the land.

8.5. Condemnation. In the event of condemnation of Common Areas which does not result in the taking of any Unit, the trustees shall have the power to represent the Association in the action, and to litigate or compromise the action on behalf of the Association. The proceeds of any condemnation award will be the property of the Association, and used to fund the Common Areas expenses, or, in the judgment of the trustees, distributed to the Owners in proportion to their undivided ownership interest. In the event of condemnation that involves a taking of both Common Areas and all or part of any Unit, the Owner of the affected Unit may appear on his or her own behalf, and any award applicable to the taking of the Unit is the sole property of the Unit Owners. If such taking results in the reduction in size of any Unit, or if Units are completely eliminated, the trustees will present the Owners with an amended declaration which revises the number of Units and the undivided interest appurtenant to each.

## ARTICLE IX

### ENFORCEMENT

9. This Declaration is enforceable by bringing action in the courts of the State of Utah with jurisdiction and venue in Salt Lake County, Utah. The provisions are enforceable by seeking money judgments, the right to foreclose on liens, or in the case of covenants concerning the use of property, by injunction or any other appropriate legal or equitable remedy.

9.1 Notice of past due assessments will be sent to the Unit Owner at the last known address as recorded on the tax rolls of Salt Lake County and delivered in person to the Unit. If payment is not then made within ten days of written notice, the Association may record a notice of lien against the Unit and proceed in collection or foreclosure. Notice of non-monetary violations of this Declaration will be given in the same manner, and if the violation is not cured, or the acts constituting the violation are repeated within ten days, the Association may seek an injunction compelling compliance with the provisions of this Declaration.

9.2. Severability. If any provision of this Declaration is adjudicated to be unenforceable, the remainder of the Declaration shall remain in full force and effect.

9.3. Attorney Fees. If the Association is required to consult with an attorney for the purposes of collection of past due assessments, or enforcement of other covenants, conditions, or restrictions in this Declaration, the Owner in default or violation agrees to reimburse the Association for its reasonable attorney fees, whether suit is filed or not. If a suit is filed for breach of any provision of this Declaration, the prevailing party shall recover all enforcement costs, including all actual attorneys' fees incurred whether the action is based on legal or equitable principles or both.

ARTICLE X

EASEMENTS RESERVED AND ENCROACHMENTS

10.1. Easement to Facilitate Development. Declarant hereby reserves to itself and its respective designees a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of improvements on the Property, including without limitation: (a) temporary slope and construction easements; (b) drainage, erosion control and storm and sanitary sewer easements including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter the Declarant shall restore the affected area as near as practicable to its original condition; (c) easements for the construction, installation and upkeep of improvements (e.g., buildings, landscaping, street lights, signage, etc.); and (d) easements for installation, construction, operation and perpetual maintenance of all telecommunication distribution systems located on the Property or reasonably necessary to serve the Property, including, without limitation, easements in favor of Elsinore Communications LLC or to their assignee pertaining to the telecommunication system on the Property.

(a) Easement to Facilitate Sales. The Declarant hereby reserves to itself and its successors and assigns the right to: (a) use any portion of the Property with the written consent of the Owner, if applicable, as models, management offices, customer service offices or sales office parking areas; (b) place and maintain in any location on the Common Areas and the storm water management area, and on any Unit, street and directional signs, temporary promotional signs, temporary construction and sales offices, plantings, street lights, entrance features, "theme area" signs, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features; provided however, that all signs shall comply with applicable governmental regulations and the Declarant shall obtain the consent of the Owner of any affected Unit or of the Design Review Committee if the Owner does not consent; and (c) relocate or remove all or any of the above from time to time in the Declarant's sole discretion.

(b) Storm Water Management Easement. The Declarant hereby reserves unto itself and its successors and assigns an easement and the right to grant and reserve easements over and through the Property for the construction and upkeep of storm water management facilities, including storm water retention areas. The Declarant shall also have the right to allow adjacent properties to tie their storm water management facilities into the storm water management facilities for the Property; provided, however, that the Owners of such adjacent properties agree to bear a portion of the expense of upkeep for the storm water management facilities for the Property in such amount as may be deemed appropriate by the Declarant.

(c) Completion Easements and Rights of Declarant. Declarant reserves unto itself and its successors and assigns, the right, notwithstanding any other provision of this Declaration, to use any and all portions of the Property, including any Common Areas which may have previously been conveyed to the Association, for all purposes necessary or appropriate to the full and final completion of construction of the Property. Specifically, none of the provisions concerning architectural control or use restrictions shall in any way apply to any

aspect of the Declarant's development or construction activities and notwithstanding any provisions of this Declaration, none of the Declarant's construction activities or any other activities associated with the development, marketing, construction, sales management or administration of the Association shall be deemed noxious, offensive or a nuisance. Declarant reserves the right for itself and its successors and assigns, to store materials, construction debris and trash during the construction period on the Property without keeping same in containers.

(d) Grading Easements. Declarant expressly reserves unto itself the right at or after the time of grading of any street or to such other Unit or any part thereof for any purpose, to enter upon any abutting Unit and grade a portion of such Unit adjacent to such street, provided such grading does not materially interfere with the use or occupancy of a dwelling built or to be built on such Unit, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

(e) Common Areas Easements.

i. Utilities. The Declarant hereby expressly reserves unto itself and hereby grants to any utility company, to whom the Declarant may grant, convey, transfer, set over and assign the same, or any part thereof, the right to discharge surface water on and to lay, install, construct, and maintain, on, over, under or in those strips across land designated on the plats for the Property as an easement area, or on, over, under, or in any portion of any Common Areas, pipes, drains, mains, conduits, lines, and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, and other public utilities or quasi-public utilities deemed necessary or advisable to provide adequate service to any Unit now or hereafter laid out or established on the Property, or the area in which the same is located, together with the right and privilege of entering upon the Common Areas for such purposes and making openings and excavations therein, provided that same be corrected and the ground be restored and left in good condition.

ii. Sediment Control Ponds/Facilities. The Declarant hereby expressly reserves unto itself the right to continue to use and maintain any sediment control ponds or facilities located on any Common Areas.

(f) Maintenance Easements. Each Owner hereby grants an easement to the Association and its agents over, upon and through their Unit in order for the Association to perform any and all repair and maintenance of Units which the Association is either required to perform hereunder or elects to perform pursuant to the provisions of this Declaration.

(g) Any and all conveyances made by the Declarant to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. Upon written request of the Declarant, the Association and each Owner shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

(h) Duration and Assignment of Development Rights. The Declarant may assign its rights under this Section to, or share such rights with, one or more other persons, exclusively, simultaneously or consecutively. The rights and easements reserved by or granted to the Declarant pursuant to this shall continue for so long as the Declarant or its designees are

engaged in development or sales, or activities related thereto, anywhere on the Property, unless specifically stated.

(i) Association Power to Make Dedications and Grant Easements. The Declarant, on behalf of itself and its successors and assigns, hereby also grants to the Association the rights, powers and easements reserved to the Declarant hereunder. These rights, powers and easements may be exercised by the Association, subject to any other provisions herein; provided, however, that the limitations on duration applicable to the Declarant shall not apply to the Association. If the Declarant or any Owner requests the Association to exercise its powers under this Section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

10.2. Easement for Upkeep. Declarant hereby reserves unto itself and hereby grants to the Association, the managing agent and any other persons authorized by the Board of Trustees, in the exercise and discharge of their respective powers and responsibilities, the right of access over and through any portion of the Property for purposes of upkeep of the Property, including, without limitation, the right to make inspections, correct any condition originating in a Unit or in the Common Areas threatening another Unit or the Common Areas, correct drainage, perform installations or upkeep of utilities, landscaping, retaining walls or other improvements located on the Property for which the Association is responsible for upkeep, or correct any condition which violates this Declaration. The agents, contractors, officers and Trustees of the Association may also enter any portion of the Property (excluding any improvement) in order to utilize or provide for the upkeep of the areas subject to easements granted in this Article to the Association. Each Owner shall be liable to the Association for the cost of all upkeep performed by the Association and rendered necessary by any act, neglect, carelessness or failure to comply with this Declaration for which such Owner is responsible pursuant to this Declaration, and the costs incurred by the Association shall be assessed against such Owner's Unit in accordance with the provisions herein.

10.3. The Declarant, on behalf of itself and its successors and assigns, hereby reserves the right to grants an easement to: (a) all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies; and (b) the Association, over and through all Units, if emergency measures are required in any Unit to reduce a hazard thereto or to any other portion of the Property. The Association is hereby authorized but not obligated to take any such measures.

10.4. The Declarant hereby reserves unto itself, for so long as the Declarant is engaged in development or sales, or activities related thereto anywhere on the Property or the Declarant is an Owner and to each Owner and each person lawfully occupying a Unit, a non-exclusive right and easement of use and enjoyment in common with others of the Common Areas, provided, however, that the Declarant shall have the same right and easement of use as the other Owners. Such right and easement of use and enjoyment shall be appurtenant to each Unit, whether or not mentioned in the deed thereto. Any purported conveyance or other transfer of such rights and easements apart from the Unit to which such rights and easements are appurtenant shall be void.

10.5. Vehicle and Pedestrian Access. The Declarant hereby reserves to itself, for so long as Declarant is engaged in development or sales, or activities related thereto anywhere on the Property, and hereby grants to each other Owner and each person lawfully occupying a Unit

a non-exclusive easement over all streets, walks and paths on the Common Areas for the purpose of vehicular or pedestrian access, ingress and egress, as appropriate, to any portion of the Property to which such person has the right to go. Any purported conveyance or other transfer of such rights and easements apart from the Unit to which such right and easement are appurtenant shall be void.

10.6. The rights and easements of enjoyment created hereby shall be subject to all rights and powers of the Declarant and the Association, including without limitation the Association's right to regulate the use of the Common Areas, to grant easements across the Common Areas, to dedicate portions of the Common Areas and to mortgage the Common Areas subject to the provisions of this Declaration.

10.7. Nothing contained in this Declaration shall be construed to in any way limit the right of Declarant to use any Unit owned by Declarant for the purpose of a construction office, sales office, and/or for model and display purposes and for the carrying out of the above activities, and/or storage compound and parking lot for sales, marketing, and construction.

10.8. The Declarant, for itself and its successors and assigns, reserves the right to alter, amend, and change any lot lines or subdivision plat prior to transfer of any Unit pursuant to a recorded subdivision plat. In addition, Declarant reserves the right to alter lot lines between lots owned by it at any time.

10.9. The Declarant hereby expressly reserves unto itself and hereby grants to any utility company, on, over, under, or in any portion of any Unit, the right to install, maintain and repair pipes, drains, mains, conduits, lines, meters and other facilities for gas, electric, water, telephone, cable, and other public utilities or quasi-public utilities deemed necessary or advisable to provide adequate service to any Unit now or hereafter laid out or established on the Property and making openings and excavations therein or thereon, provided that same be corrected and the area be restored and left in good condition. The foregoing shall include, without limitation, the right of Declarant to grant perpetual easements affecting any portion of the Property, from time to time, which may be assignable, to Elsinore Communications LLC, or other parties, (and re-assigned thereafter to other parties) for the purpose of the excavation, construction, entrenchment, repair, replacement, operation and maintenance of the telecommunication systems (including cables and associated system facilities, hardware and equipment) for the Property and up to a user access portal for each Unit.

10.10. If any structure (including, without limitation, any gables, overhangs, soffits or roof lines), or any part thereof, as a result of the initial construction and/or settlement and/or shifting of such structure, encroaches upon an adjoining Unit, there shall arise, without the necessity of any further or additional act or instrument, an easement for the encroachment in favor of the encroaching Owner, his/her/their heirs, personal representatives, successors and assigns. Such easement shall remain in effect for so long as the encroachment shall exist. The conveyance or other disposition of a Unit shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Section 10.10. without specific or particular reference to such easement.

ARTICLE XI  
GENERAL PROVISIONS

11.1. The covenants, conditions and restrictions contained in this Declaration may be enforced as follows.

11.1.1. Violation Constitutes Nuisance. The violation of the provisions of this Declaration is deemed to be a nuisance, and the Owner of the property on which the violation occurs is responsible for the removal or abatement of the nuisance.

11.1.2. Remedies.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Unit), by any Owner, or by the Association in its own name. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorneys fees and costs of court.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state, or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. These covenants are to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law and equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the covenants contained in this Declaration in the future or against other similar violations.

11.2. Limited Liability. Neither the Declarant, the trustees, nor the Association or its individual Members, nor any other Owner shall have personal liability to any other Owner for actions or inactions taken under these covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority under these covenants and without malice.

11.3. Arbitration. In any dispute between the Association and any Owner arising under the terms of this Declaration or the Bylaws of the Association, the parties will submit the issue to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Judgment may be issued on award or determination of the arbitrators in any court having jurisdiction over the Property or the parties to the dispute. All fees for the American Arbitration Association shall be equally divided and paid in advance by the parties, or at such time as required by the Arbitration Rules. While it is the intent of the Declarant that disputes be resolved by arbitration wherever possible, the Association shall not be deemed to have waived its rights to foreclose liens for Common Areas expenses or other charges through judicial foreclosure, nor to have waived the right of the Association to seek injunctive relief in those situations where arbitration does not provide an adequate or complete remedy. The Association

will attempt to include arbitration clauses in contracts with third parties providing goods or services to the Association. In addition to the foregoing, in the event any dispute arises between the Declarant and the Association or any of its Owners, then the Association, or any of its Owners, as the case may be, shall notify Declarant in writing of the existence of the dispute the requested remedy. Declarant shall have forty-five (45) days to take the actions necessary to resolve the dispute, provided that the Association or any of its Owners, as applicable, cooperate with Declarant in such resolution. If the Declarant fails or refuses to resolve the dispute, then the parties shall proceed to resolve said dispute under arbitration as described in this Section 11.3.

11.4. Constructive Notice. Every person who owns, occupies, or acquires any right title or interest in any Unit is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions and restrictions against his or her Unit, whether or not there is any reference to this Declaration in the instrument by which he acquires his or her interest in any Unit.

11.5. Notices. All notices under this Declaration are deemed effective forty-eight (48) hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

11.6. Liberal Interpretation and Conflict. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for development of the Property. Section headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well. In addition, in the event there is any conflict between any provisions of this Declaration and any other type of governing document of an association formed by the Owners of single family or condominium Units, then the provisions of this Declaration shall govern and control. Further, in the event there is any conflict between the provisions of this Declaration and the provisions of the governing documents for any Condominium Association which is subject to this Declaration, the provisions of this Declaration shall control.

11.7. Limitation of Restrictions on Declarant. Declarant is undertaking the work of planning, developing and selling the Property. The completion of the work and the sale or other disposal of the Units is essential to the establishment and welfare of the Property. In order that such work may be completed as rapidly and efficiently as possible nothing in this Declaration shall be understood and construed to:

(a) Prevent Declarant, or its contractors or subcontractors from doing on the Property or any part thereof whatever is reasonably necessary or advisable in connection with the completion of such work; or

(b) Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part of the Property such structures as may be reasonably necessary for the completion of its business of completing said work and establishing the Property as a residential and commercial community and disposing of the Property by sale, lease or otherwise; or



(c) Prevent Declarant from conducting on any part of the Property as residential development and the area used for commercial use and of disposing of the Property by sale, lease or disposition thereof.

The exemption in this Section 11.7. shall automatically expire upon the termination of the Development Period.

11.8. Resident Agent. The resident agent of the Association is Michael Brodsky, whose address is 308 East 4500 South, Suite 200, Murray, Utah 84107.

11.9. Elsinore Contract. The Association and each Owner and occupant on the Property shall be subject to that certain Agreement between Elsinore Communications, LLC ("Elsinore") and the Association dated September 23, 2006, which refers to that certain MDU Services Agreement ("MDU Agreement") dated August 9, 2006, by and between Elsinore Communications, LLC ("Elsinore") and MStar as well as that separate agreement between UTOPIA and Elsinore entitled Agreement Between Utah Telecommunication Open Infrastructure Agency and Elsinore Communications, LLC ("UTOPIA Agreement") dated August 22, 2006. Assessments levied by the Association shall include all amounts required under the Elsinore Agreement. The Association is obligated to insure that the budget of the Association each year includes the amounts to be paid under the Elsinore Agreement. The sums due under the Elsinore Agreement will be billed by Elsinore and the Association is required to pay the amounts due under the bills on a monthly basis, or other periodic installment as determined by Elsinore in its sole and absolute discretion from time to time. The Association and each Owner shall also indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses arising under the MDU Agreement due to any act or omission by any Owner and/or the Association. The Association and each Owner as well as any future Owners recognize the rights Elsinore has under the MDU Agreement and shall not take any action or fail to take any action which may impair Elsinore's rights under the MDU Agreement or otherwise affect Elsinore in connection with the MDU Agreement or the services provided thereunder, and in the event the Association and/or any Owner takes any such action or fails to take any action, then the violating party or parties shall be liable to indemnify Elsinore for any and all damages, losses, costs, legal fees or other expense Elsinore may incur in connection therewith. Further, the Association and each Owner agree and acknowledge that in the event MDU fails to comply with any term of the MDU Agreement, then in no event may Elsinore be liable to the Association or any Owner or occupant of the Property for any claim, loss or any other type of expense. This Article 11.9. may not be amended by any party without the prior written consent of Declarant and Elsinore, which consent may be withheld in the sole and absolute discretion of Declarant and/or Elsinore.

Each Owner is obligated to inform the Association in writing no later than ten (10) business days following the Owner signing any contract of sale of the Unit and such notice shall contain the buyer's or buyers' name as well as the date of settlement. Further, each Owner shall include in any contract of sale the acknowledgement and attachments contained in Exhibit "C", attached hereto, executed by all buyers under the contract of sale. The signed notice shall be forwarded to Elsinore Communications LLC at 308 East 4500 South, Suite 200, Murray, Utah 84107 or such other address as Elsinore may provide to the Association from time to time, within the ten (10) days provided herein. The Association shall be responsible for enforcing the Owner's obligations under this Article 11.9. In the event any Owner fails to comply with this

Article 11.9 and/or the Association fails to enforce the obligations of the Owner described in this Article 11.9, then the Owner and the Association shall be liable to Elsinore for any costs, damages, legal fees and the like which Elsinore may incur as a result thereof. No amendment to this Article 11.9 may be made without the prior written consent of Elsinore, which consent may be withheld in its sole discretion.

IN WITNESS WHEREOF, the undersigned party has set its hand and seal on the date first written above.

WITNESS:

WAVERLY STATION, LLC.  
a Utah limited liability company


*Debra Anders*

*John Aldous* (SEAL)

STATE OF UTAH, CITY/COUNTY OF SALT LAKE, TO WIT:

I HEREBY CERTIFY that on this 26th day of September 2006, before me, the subscriber, a Notary Public of the State of Utah, personally appeared John Aldous, known to me or suitably proven, who acknowledged himself to be President of Hamlet Homes Corporation, Managing Member of Waverly Station, L.L.C., the Declarant named in the foregoing Declaration of Covenants, Conditions and Restrictions, and who, being authorized to do so, in my presence, signed and sealed the same and acknowledged the same to be the act and deed of the Declarant.

AS WITNESS my hand and seal.

*Debra Anders*  
Notary Public  
 Notary Public  
DEBRA ANDERS  
8378 South 3220 West  
West Jordan, Utah 84088  
My Commission Expires  
November 2, 2009  
State of Utah  
My Commission Expires: Nov 2, 2009

JOINDER AND CONSENT

American Securities Company and Wells Fargo Bank, NA, are, respectively, the Trustee and the Beneficiary under that certain Deed of trust dated July 17, 2006 and recorded as Entry No. 9789349 in Book 9325 at Pages 1975-1986 of the Official Records of Salt Lake County, Utah hereby join in the foregoing Declaration of Covenants, Conditions and Restrictions for the express purpose of subordinating all of their respective right, title and interest under such Deed of Trust in and to the real property described in Exhibit A such to the operation and effect of such Declaration.

Nothing in the foregoing provisions of this Consent and Agreement of Trustee and Beneficiary shall be deemed in any way to create between the person named in such Declaration as "the Declarant" and any of the undersigned any relationship of partnership or joint venture, or to impose upon any of the undersigned any liability, duty or obligation whatsoever.

IN WITNESS WHEREOF, the Trustee and Beneficiary have executed and sealed this Consent and Agreement of Trustee and Beneficiary or caused it to be executed and sealed on its behalf by its duly authorized representatives, this 26 day of Sept 2006.

WITNESS OR ATTEST:

Debra Roberts

TRUSTEE:

Harro Van Leeuwen (SEAL)

WITNESS OR ATTEST:

Debra Roberts

BENEFICIARY:

Harro Van Leeuwen (SEAL)

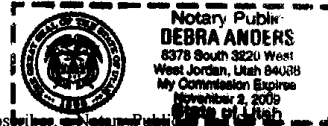
STATE OF UTAH  
COUNTY OF SALT LAKE

I HEREBY CERTIFY, that on this 26<sup>th</sup> day of Sept, 2006, before me, the subscriber, a Notary Public in and for the State of Utah and Salt Lake County aforesaid, personally appeared Harro Van Leeuwen, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged himself to be the Trustee of American Securities a Utah corporation, that he has been duly authorized to execute, and has executed, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

Debra Anders  
Notary Public  
My commission expires: Nov 2 2009

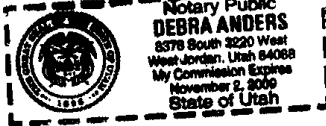
STATE OF UTAH  
COUNTY OF SALT LAKE



I HEREBY CERTIFY, that on this 26 day of Sept, 2006, before me, the subscriber, a Notary Public in and for the State of Utah and Salt Lake County aforesaid, personally appeared Harro Van Leeuwen, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged himself to be the vice president of Wells Fargo Bank, that he has been duly authorized to execute, and has executed, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

Debra Anders  
Notary Public  
My commission expires: Nov 2 2009



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**EXHIBIT A**

**Description of the Property**

**PHASE I**

BEING all those Lots shown and designated as Lot Nos. 1 through and including 41 and the Common Area shown as "Common Area" on the Plat entitled, "WAVERLY STATION PHASE No. 1" recorded among the Recorder's Office of Salt Lake County on August 30, 2006 in Book 2006P on Page 214.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**EXHIBIT B**

**Description of the Additional Property**

**Future Phases**

All that land which is described in a Supplementary Declaration intended to be executed and recorded by Declarant from time to time in the future.

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**EXHIBIT C**

**Internet Service Agreement &  
Television Service Agreement**

**As Attached**

## Internet Service Agreement

### ACKNOWLEDGEMENT BY CUSTOMER/BUYER:

1. This Internet Service Agreement provides terms specifically related to Customer's Internet Service. By signing up for Internet Service, Customer agrees to be bound by the terms of this Internet Service Agreement, as evidenced by Customer's signature below. All obligations in this Internet Service Agreement that refer to "Customer" also jointly and severally apply to Users. Customer shall make all Users at each Service Location reasonably aware of the restrictions and limitations associated with the Internet Services, and Customer shall be responsible for any breach of any portion of this Internet Service Agreement by any User.
2. **Description of Service.** Customer will be provided with access to the Internet via fiber optic cable under that separate contract by and between Waverly Station Homeowners Association, Inc. ("Association") and Elsinore Communications, LLC ("Elsinore"). MSTARMetro.net, LLC ("MSTAR") will make every effort to ensure consistently high upload and download speeds, but makes no warranty regarding the Internet Service.

Each Unit will be provided with:

An Internet connection speed of up to 10 megabits/sec

100 gigabytes of total bandwidth usage per month. If a Unit uses bandwidth in excess of this amount, then MSTAR may invoice Customer at the then-current per gigabyte overage charges for all usage over 100 gigabytes, and Customer shall promptly pay such charges. Overage charges are \$1.00 per gigabyte. All additional bandwidth shall be sold in units of 1 gigabyte each. Any unused bandwidth shall be automatically forfeited at the end of each month, and no unused bandwidth amounts will roll-over into any subsequent month. No credits will be given for unused bandwidth.

### 3. Acceptable Use Policies

a. **CUSTOMER AGREES TO USE THE SERVICE ONLY FOR LAWFUL PURPOSES.**

b. Unacceptable uses include, but are not limited to:

- i. **Spam.** Customer may not utilize the Internet Service for the purpose of sending direct mailings, solicitations, bulk mail, spam, or any other high volume e-mailing function. Customer will not send e-mail to persons who are not personally known to Customer, or who did not personally request e-mail from Customer. Customers whose activities result in the MSTAR domain name being banned from an e-mail server due to spamming may be assessed fees associated with

the cost of lifting the ban. Any violation of this policy may result in the immediate termination of Customer's account, at the sole discretion of MSTAR. If Customer violates this spamming policy, it will be assessed the following fines and fees, which Customer hereby agree to pay:

- (1) First offense: \$100
- (2) Second offense: \$500
- (3) Third offense: \$500 and automatic termination of Customer's account.

- ii. **Newsgroup posting.** The posting of any advertisement or other commercial solicitation to any newsgroup is prohibited. MSTAR reserves the right to determine whether a post constitutes an advertisement or commercial solicitation. The posting of a single article or substantially similar articles to an excessive number of newsgroups or mailing lists, or continued posting of articles that are off-topic is strictly prohibited. A posting will be considered off-topic when it provokes complaints from the regular readers of the newsgroup or is deemed so by MSTAR. A violation of this policy will result in the immediate termination of Customer's account.
- iii. **Obscenity.** Customers may not utilize the Internet Service to send or receive obscene materials.
- iv. **Impersonation.** Customers may not utilize the Internet Service to impersonate another person.
- v. **Defamation.** Customers may not utilize the Internet Service to defame, harm, harass, or libel another person.
- vi. **Trade secrets.** Customers may not utilize the Internet Service to send or receive trade secrets in violation of applicable state or federal law.
- vii. **Malicious software or code.** Customers may not utilize the Internet Service to send or intentionally receive any viruses, spyware, worms, Trojan horses or any other malicious computer software or code designed to damage or make use of any third party's property.
- viii. **Intellectual property.** Customers may not utilize the Internet Service infringe on any party's intellectual property rights. Customers may not engage in the illegal or unauthorized transfer of intellectual property, including but not limited to music, written works, movies, software, videogames, instructions, data, and code.
- ix. **Unauthorized access to computers.** Customers may not utilize the Internet Service for the purpose of hacking or other conduct related to unauthorized access of computers,



servers or systems.

- c. **Bandwidth limits and fluctuations.** MSTAR may, when necessary to control network congestion, impose reasonable bandwidth limits on Customer's use of the Service in order to ensure equitable access for other Customers. MSTAR will use commercially reasonable efforts to provide the bandwidth speed described in this Attachment, but Customer acknowledges that bandwidth speeds may fluctuate from time to time throughout the day and that Customer may not receive the designated speeds at all times during the day. At MSTAR's discretion, MSTAR may restrict or limit upload speeds.
- d. **Minors.** Customer will be fully responsible for monitoring minors' access to the Service, and will take appropriate steps to ensure that minors do not have access to harmful content. Customer acknowledges that MSTAR does not monitor minors' access to the Service and is not responsible for minors' access to inappropriate or harmful content.
- e. **Personal Accounts.** Customers that have paid for a personal account (as opposed to a business account) are not permitted to use MSTAR's Internet connection to sell or advertise goods or services. This is only permitted to those who have purchased a business account or a virtual server.
- f. **Enforcement.** MSTAR reserves the right to take whatever actions it deems appropriate to enforce these policies. MSTAR also reserves the right to change these policies without prior notice at any time. The actions MSTAR takes may include account suspension or termination. MSTAR does not issue any credits for accounts cancelled due to policy violations. Any Internet activity, which references back to MSTAR or its services in a damaging manner, will result in suspension or termination of account(s). Illegal Internet activity using or referencing to MSTAR or an account or services provided by MSTAR will result in immediate termination, possible prosecution, and assessment of legal fees accrued. In addition to any other fees and penalties that may be assessed by the MSTAR, as provided herein, Customer shall be held liable for any and all costs incurred by the MSTAR as a result of Customer's violation of any terms and conditions of this Agreement. This includes, but is not limited to, attorneys' fees and costs resulting from MSTAR responses to complaints from and the cleanup of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations. MSTAR's current hourly rate for responses to complaints and cleanup of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations is listed at are listed at the applicable MSTAR website. Further, Customer shall indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses due to any act or omission by the Customer hereunder

#### 4. Responsibility for Security and Filtering

- a. **Security and viruses.** Customer acknowledges that by connecting to the Internet, Customer's and its User's computer system and files are vulnerable to access by unauthorized third parties (including hackers). Customer is solely responsible for installing, implementing and using computer security precautions such as closing unnecessary ports and using firewall technology. CUSTOMER AND ITS USERS ARE STRONGLY ENCOURAGED TO INSTALL AND ROUTINELY UPDATE FIREWALL AND ANTIVIRUS SOFTWARE. In the event that Customer is found to be spreading a virus, whether intentionally or unintentionally, MSTAR may suspend Customer's account until such time as MSTAR believes that Customer has effectively remedied the situation.
  - b. **Passwords.** Customer may be provided with initial passwords to access the Internet Service. Customer agrees to change the password upon initializing the account, and will protect any passwords associated with the account. Customer agrees that its username and password, and changes to both of these items, are Customer's responsibility.
  - c. **Web and E-mail Filtering.** From time to time MSTAR may make available to Customer certain Web, E-mail and other Internet filtering tools and features. Customer acknowledges that, because the Internet is constantly changing and evolving, these tools and features are not guaranteed to restrict all obscene, immoral or other unwanted content, email or websites. Further, these tools and features may not be able to monitor all data, email or materials accessed or downloaded by Customer (e.g., file sharing utilities). The Web, E-mail and other Internet filtering tools and features are provided AS-IS, WHERE-IS and MSTAR makes no warranty as to their effectiveness or usefulness.
  - d. **Wireless connections.** Customer acknowledges that using wireless networking connectivity may present certain security risks. Customer is solely responsible for implementing and using wireless security measures, including but not limited to enabling encryption technology (e.g., Wired Equivalent Privacy (WEP) or Wi-Fi Protected Access (WPA)) on the relevant equipment, including the access point.
  - e. **Disclaimer of liability.** Customer acknowledges and agrees that MSTAR has no liability for any unauthorized access of any Customer computer or system by any third party, and that Customer is solely liable for any damages arising from such unauthorized access. MSTAR is not providing any security advice or consulting services to Customer and is not responsible for installing or maintaining any security systems on behalf of Customer.
5. **IP Addressing.** MSTAR uses static and dynamic IP Addresses for Customers. Assignment of an IP address to Customer creates no ownership rights in Customer of the IP address. MSTAR retains all

rights to any IP addresses it assigns to Customer.

- 6. Ownership of Content.** Except for content on the MSTAR website, MSTAR does not own, license, or have any rights in content that Customer may upload or download, nor in e-mails that Customer may send or receive, nor in any content that Customer may upload to the server space provided by MSTAR under this Agreement. The content of all uploads, downloads, and e-mails associated with Customer's use of the Internet Service is solely the property and responsibility of Customer.
- 7. Forwarding Upon Termination.** MSTAR will not forward Customer's email or URL after termination, and MSTAR does not offer a discounted forwarding option. For this reason, it is recommended that Customer's continue their account with MSTAR for as long as necessary for forwarding purposes. As long as MSTAR forwards Customer's email or website, Customer must continue its account with MSTAR.

Agreed and Accepted as of the Date shown below.

"CUSTOMER/BUYER(S)"

Name: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Customer/Buyer

\_\_\_\_\_

Customer/Buyer

Date: \_\_\_\_\_

**UPON COMPLETION RETURN TO:  
Elsinore Communication  
308 East 4500 South, Suite 200  
Murray, UT 84107**

## TELEVISION SERVICE AGREEMENT

### ACKNOWLEDGEMENT BY CUSTOMER/BUYER:

1. This Television Service Agreement provides terms specifically related to Customer's Television Service. By signing up for Television Service, Customer agrees to be bound by the terms of this Television Service Agreement as evidenced by Customer's signature below.. All obligations in this Television Service Agreement that refer to "Customer" also jointly and severally apply to Users. Customer shall make all Users at each Service Location reasonably aware of the restrictions and limitations associated with the Television Services, and Customer shall be responsible for any breach of any portion of this Television Service Agreement by any User.
2. **Description of Service.** Customer will be provided with television Programming. A complete list of the Programming channels, services and equipment provided under this Television Service Agreement can be found at the applicable MSTAR website. MSTAR may update this list, add and delete programs from time to time. MSTAR does not warrant the provision of any particular Programming in conjunction with this agreement. In the event the Customer desires to upgrade the Television Service, it must do so by separate contract with and payment to MSTAR.
3. **Private Viewing.** CUSTOMER AGREES TO USE (AND REQUIRE THAT ITS USERS USE) THE TELEVISION SERVICE FOR PRIVATE VIEWING ONLY. Customer will not provide public transmissions or retransmissions of any Programming without the written consent of the party holding a license to the transmitted or retransmitted content. Customer will not transmit or retransmit Programming in a commercial establishment without the written consent of the party holding a license to the transmitted or retransmitted content.
4. **Unauthorized Devices.** Customer agrees not to attach any unauthorized devices to the Service that are designed to unlock, descramble, unencrypt, find, or otherwise manipulate the Programming that MSTAR offers.
5. **Audit Rights.** MSTAR reserves the right to audit Customer's use of the Television Service to determine whether Customer has engaged in any unauthorized uses. Customer consents to MSTAR's access to and manipulation of Customer's equipment or software for the purpose of such audit.
6. **Compliance.** Customer agrees to comply with all relevant laws, rules and regulations related to the Television Services, and will not engage in any practice nor use any tools or techniques (including television piracy tools) in violation of any law, rule or

regulation. Should Customer engage in any illegal activity associated with the Television Services, then at MSTAR's option it may cancel this Attachment B (Television Service Agreement) immediately and without notice. Further, Customer shall indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses arising due to any act or omission by the Customer hereunder.

Agreed and Accepted as of the Date shown below.

**"CUSTOMER/BUYER(S)"**

Name: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Customer/Buyer

\_\_\_\_\_

Customer/Buyer

Date: \_\_\_\_\_

**UPON COMPLETION RETURN TO:  
Elsinore Communication  
308 East 4500 South, Suite 200  
Murray, UT 84107**