

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
AND BYLAWS  
FOR  
MCCLELLAND ENCLAVE**

This Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements, and Bylaws for McClelland Street Subdivision (the "Declaration"), is made and executed by McClelland Enclave Corporation, a Utah corporation, whose principal address is 273 N. East Capitol Street, Salt Lake City, Utah 84103 (hereinafter referred to as the "Declarant").

**RECITALS**

A. This Declaration affects that certain real property located in Salt Lake County, Utah described with particularity in Article II below (the "Property").

B. The Property is an area of unique natural beauty, featuring distinctive terrain.

C. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to create a community of single family residential lots in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.

D. Declarant is the owner of the Property; except for Lot 106, which is owned by Keith and Marci Rasmussen. It is the intent of the Declarant that the Owners of Lot 106 shall not be subject to the requirements of this Declaration except that Lot 106 shall maintain the landscaping on their Lot either on their own or professionally and Lot 106 shall pay their share of the maintenance of the Private Lane and Common Area.

E. Declarant has constructed, is in the process of constructing, or will construct upon the Property a residential subdivision which shall include certain Lots, Common Area, and other improvements. All of such construction has been, or is to be, performed in accordance with the plans contained in the Final Plat to be recorded concurrently herewith.

F. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Tract, together with an appurtenant ownership interest in the Association of Lot Owners acting or taken as a group in accordance with the Declaration. Ownership will be subject to the Utah Community Association Act, Utah Code Ann., Sections 57-8a-1 et seq. (the "Act"), as well as the covenants, conditions and restrictions set forth herein.

G. Since the completion of the Project may be in phases, the completed Project will consist of the original phase and all subsequent phases.

H. The Project is to be known as "McClelland Enclave"

## COVENANTS, CONDITIONS, AND RESTRICTIONS

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

### I. DEFINITIONS

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

1. Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys' fees, fines, late fees, default interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

2. Architectural Review Committee (the "ARC") shall mean the person or persons appointed to review the designs, plans, specifications, homes, elevations, construction materials, architecture, fencing, landscaping, and other physical improvements within the Project.

3. Articles of Incorporation shall mean and refer to the Articles of Incorporation of MCCLELLAND ENCLAVE HOMEOWNERS ASSOCIATION on file or to be filed with the Utah Department of Commerce.

4. Assessment shall mean and refer to any amount imposed upon, assessed or charged a Lot Owner or Resident at the Project.

5. Association shall mean and refer to MCCLELLAND ENCLAVE HOMEOWNERS ASSOCIATION, the Utah nonprofit corporation that is created by the filing of the Articles of Incorporation.

6. Board of Directors shall mean the governing board of the Association.

7. Budget shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration.

8. Business Use and Trade shall mean and refer to any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor.

9. Bylaws shall mean and refer to the Bylaws of the Association.

10. Capital Improvement shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.

11. Common Areas shall mean and refer to all real property in the Project owned by the Association including but not limited to the following items:

(a) The real property shown on the Plat Map which is not dedicated to the public or part of a Lot;

(b) All Common Areas specifically designated as such in the Plat Map;

(c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Lot Owners, such as telephone, electricity, gas, water, cable television, and sewer, including the main gas lines and water lines running through the Buildings;

(d) The Project's outdoor grounds; open spaces; furnishing, supplies and equipment for the benefit of all Members; exterior lighting; common fencing; sidewalks and parking spaces; roadways not otherwise dedicated to the public; and walking trails (sometimes hereafter referred to as "Common Facilities" or "Facilities").

(e) All portions of the Project not specifically included within the individual Lots; and

(f) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

12. Common Expense shall mean and refer to: (a) All sums lawfully assessed against the Owners; (b) Expenses of administration, maintenance, repair or replacement of the Project; (c) Expenses allocated by the Association among the Owners; (d) Expenses agreed upon as common expenses by the Association; and (e) Expenses declared as common expenses by the Declaration.

13. Community shall mean and refer to the Project.

14. Community Standard or Community Wide Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community, as determined by the Board from time to time.

15. Corrective Assessments shall mean a charge against a particular Owner and his Lot representing the costs to the Association incurred in taking corrective action against an Owner.

16. Declaration shall mean and refer to this Declaration of Covenants, Conditions, and

Restrictions, and Reservation of Easements, and Bylaws for McClelland Enclave.

17. Design Guidelines shall mean and refer to any design guidelines required by the City, Association or the Architectural Review Committee.

18. Dwelling or Dwelling Unit or Home shall mean and refer to the home, residence, or living unit constructed upon a Lot.

19. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

20. Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

21. Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Board. A vote which is for any reason suspended is not an "eligible vote".

22. Guest shall mean and refer to an invitee, temporary visitor or any person whose presence within the Project is approved by or is at the request of a particular Resident.

23. Improvement shall mean and refer to any physical change or addition to the Land to make it more valuable.

24. Lot shall mean and refer to a subdivided lot as shown on the Plat Map. Each Lot shall be assigned a separate "parcel" or "tax identification" number by the appropriate governmental agency.

25. Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot.

26. Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50.01%) percent of the total eligible number.

27. Manager shall mean and refer to the person or entity appointed or hired by the Association to manage and operate the Project and/or assist in the administration of the Association.

28. Member unless the context clearly requires otherwise, shall mean and refer to the Owner of a Lot, each of whom is obligated, by virtue of his ownership to be a member of the Association.

29. Mortgage shall mean and refer to both a first mortgage or first deed of trust on any Lot, but shall not mean or refer to an executory contract of sale.

30. Mortgagee shall mean and refer to a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Lot, but shall not mean or refer to a seller under an executory contract of sale.

31. Owner shall mean and refer to the Person who is the owner of a Lot. The presume owner is the reputed owner of record in the office of the County Recorder of Salt Lake County, Utah of a fee or an undivided fee interest in a Lot, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

32. Period of Declarant's Control shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) seven (7) years from the effective date of this Declaration, or (b) the Declarant executes and records a written Waiver of his right to control.

33. Permanent Resident shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for more than eight (8) weeks in any calendar year.

34. Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

35. Phase shall mean and refer to a particular stage or area of development within the Project so designated by the Declarant.

36. Plat Map shall mean and refer to the plat map (or maps) of "McClelland Street Subdivision" on file in the office of the County Recorder of Salt Lake County, as amended or supplemented from time to time.

37. Private Lane shall mean that portion of McClelland Street that shows on the recorded plat of the McClelland Street Subdivision.

38. Project shall mean and refer to McClelland Enclave.

39. Project Documents shall mean and refer to the Declaration, Bylaws, Rules and Regulations, and Articles of Incorporation.

40. Property shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to this Declaration.

41. Recreational, Oversized, or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, all-terrain vehicle (ATV), off-road vehicle (ORV), commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

42. Repair shall mean and refer to merely correcting the damage done sometimes by

accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

43. Resident shall mean and refer to any person living or staying at the Project. This includes but is not limited to all lessees, tenants and the family members, agents, representatives, or employees of Owners, tenants or lessees.

44. Residential Lot shall mean and refer to a Lot to be used for residential purposes, primarily for the construction of a Dwelling.

45. Rules and Regulations shall mean rules and regulations as may be adopted and promulgated by the Board pursuant to the Bylaws and this Declaration, as the Board deems necessary or desirable to (a) aid it in administering the affairs of the Association, (b) insure that the Property is maintained and used in a manner consistent with the interests of the Owners, (c) regulate the use of the Lots and Common Areas and Facilities, and (d) establish penalties and monetary charges for the infractions of the Project Documents, as such may be amended from time to time.

46. Single Family shall mean and refer to *one* of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and an additional person or persons as a caretaker or as domestic help, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.

47. Single Family Residence shall mean and refer to both the architectural style of a Dwelling and the nature of the residential use permitted.

48. Trust Deed for Assessments shall mean the deed of trust created by this Declaration in Article III, subsection 33 to further secure the Owner's obligations to pay Assessments and to provide the Association with the power of non-judicial trust deed foreclosure provided for in Utah Code Ann. §57-1-19, *et seq.*, as amended from time to time.

## II. SUBMISSION

The real property described with particularity on Exhibit "A", attached hereto and incorporated herein by this reference, is hereby submitted to the Declaration, and sometimes referred to herein as the Property.

The Property is hereby made subject to, and shall be governed by the Declaration, and the covenants, conditions and restrictions set forth herein.

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

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

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

### III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. Description of Improvements. The significant improvements contained in the Project include residential Lots, Dwellings, and Common Area. The Project will also contain other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentences are depicted on the Plat Map for the entire development.

2. Description and Legal Status of the Property. The Plat Map shows the type and location of each Lot and its Lot Number, which are reserved for the exclusive use of a Lot or Lot Owners, and the Common Areas and Facilities in the vicinity. The Common Area shall be deeded to and owned by the Association. All Lots shall be capable of being independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers.

3. Membership in the Association, Classes of Membership and Voting Allocations. Membership in the Association is mandatory and may not be partitioned from the ownership of a Lot. Each Lot Owner by virtue of his accepting a deed or other document of conveyance to a Lot is deemed to be a member of the Association. The Association shall have two classes of membership – Class A and Class B – described more particularly as follows:

(a) Class A. Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

(1) One Vote. Each Lot shall have one (1) vote;

(2) Subject To Assessment. No vote shall be cast or counted for any Lot not subject to assessment;

(3) Multiple Owners. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.

(4) Leased Lot. Any Owner of a Lot which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

(b) Class B. Class B Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to five (5) votes per Lot owned. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (the "Event" or "Events"):

(1) Lots Sold. Four (4) months after the last Lot owned by the Declarant has been sold and closed; or

(2) Seven Years. Seven (7) years from the effective date of this Declaration; or

(3) Election. When, in its sole discretion, Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot owned. After the occurrence of such event, the Declarant shall call a meeting, in the manner described in the Bylaws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

#### 4. Status and Registration of Association.

(a) The Association shall be in the form of a corporation. The governing board may unilaterally re-file the articles of incorporation of the Association if its status has been suspended or dissolved, and it may adopt the prior bylaws.

(b) The Association shall register with the Utah Department of Commerce and pay the Registration Fee<sup>1</sup> as required by statute.

5. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

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<sup>1</sup> Currently \$37.00



All of [Lot No. \_\_\_\_\_ ] contained within McClelland Enclave [Phase No. \_\_\_\_\_ (if applicable) ], as the same is identified in the Plat Map recorded in Salt Lake County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Salt Lake County, Utah (as said Plat Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions, and Restrictions of McClelland Enclave AT THE DISTRICT recorded in Salt Lake County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Salt Lake County, Utah (as said Declaration may have heretofore been supplemented).

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Membership in the Association and the non-exclusive right to use and enjoy the common area shall not be separated from the Lot to which they appertain; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of non-exclusive use shall automatically accompany the transfer of the Lot to which they relate.

6. Rights of Owners. Except as may be specifically set forth in the Project Documents, neither the Board nor the Members may adopt any Rules and Regulations in violation of the following provisions, though where not specifically provided for otherwise the following provisions may be altered by an amendment to this Declaration if permitted by law:

(a) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Flags, Signs, Religious and Holiday Displays. The Association may not prohibit the display of a U.S. flag inside a Lot or Dwelling, if the care of the flag and display is consistent with federal law. The Association may control and restrict the display of a flag in the Common Area. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.

(c) Household Composition. No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Declaration limits residency in a Dwelling to a Single Family and the Association shall have the power to limit the total number of occupants permitted in each Dwelling on the basis of the size and facilities of the Dwelling and its fair share use of the Common Area.

(d) Activities Within Lots. No rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions

visible from outside the Lot, or that create any unreasonable sound or annoyance.

(e) Allocation of Burdens and Benefits. No rule shall alter the basis for allocation of financial burdens among various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Area and Facilities, from adopting generally applicable rules for use of Common Area and Facilities, or from denying use privileges to those who abuse the Common Area, violate Project Documents, or fail to pay assessments. This provision does not affect the right to increase the amount of Assessments.

(f) Alienation. Subject to the restrictions found in Section 7 herein, no rule shall prohibit the leasing or transferring of any Dwelling, or require consent of the Association or Board for leasing or transferring of any Lot.

(g) Reasonable Rights to Develop. No rule, amendment to this Declaration, or action by the Association or Board shall unreasonably impede Declarant's right to develop in accordance with the Master Plans, including, but not limited to, the rights of the Declarant as set forth herein.

(h) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only and shall not require the removal of any property which was being kept on the Property prior to the adoption of such and which was in compliance with all Rules and Regulations in force at such time unless otherwise required to be removed by law. The limitations in this subsection shall apply to Rules and Regulations only; they shall not apply to amendments to this Declaration.

(i) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Lot. There shall be no requirements concerning who may own a Lot, it being intended that they may and shall be owned as any other property rights by any Person. The Project shall be used only for residential purposes, except as expressly set forth below, and the Common Areas and Facilities shall only be used in a manner consistent with the residential nature of the Project.

(j) Mandatory Association. Each purchaser of a Lot by virtue of his acceptance of a deed or other document of conveyance shall automatically become a Member of the Association.

(k) Easements and Rights of Way. Declarant hereby reserves to itself and grants:

(1) Common Easement. A perpetual right-of-way and non-exclusive easement over, across, and through the Project for use in common by the Declarant and Owners, subject to all of the terms, covenants, conditions and restrictions set forth herein.

(2) Private Easement. A perpetual private non-exclusive easement for the exclusive use and benefit of the Declarant and Owners.

(3) Declarant's Easement. An exclusive easement to the Declarant, for itself and its affiliates and assignees, to make such use of the Project as may be necessary or convenient to perform the duties and functions hereunder, including, by way of illustration but not limitation, the construction of the improvements, Lots, and Homes in the Project.

(4) Construction Easements. A temporary construction easement to the Declarant, for itself and its affiliates and assignees, over, under, across, and through the Project for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Lots and Homes. The Owners do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors, and vibrations which may temporarily disrupt their quiet enjoyment of their Lots and Homes until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners, Lots, and Homes. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

(5) Locations of Facilities Easements. A non-exclusive easement to the Declarant, for itself and its affiliates and assignees, to construct, operate, maintain, repair, and replace all types of telecommunication facilities, including but not limited to, roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves a right of access to the Locations of Facilities over, across, under, and through the Project in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement, or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Owner.

(6) Non-Exclusive Utility Easement. A non-exclusive easement to the Declarant, and its affiliates and assignees, over, across, through, and under the Property for ingress to, egress from, and installation, replacement, repair, and maintenance of all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity, and cable communication that service the Property or any portion thereof as well as any such lines and systems which service property owned by the Declarant.

(l) Restrictions and Limitations of Use. The use of the Lots is subject to the following limitations and restrictions:

(1) Parties Bound. All provisions of the Project Documents, including without limitation the Declaration, Bylaws, and Rules and Regulations shall be binding upon all Owners, Residents and Permanent Residents, and their family members, guests, visitors, invitees, and employees; except for the Owner of Lot 106. The Owners of Lot 106 shall not be subject to the requirements of this Declaration except that Lot 106 shall maintain the landscaping on their Lot either on their own or professionally and Lot 106 shall pay their share of the maintenance of the Private Lane.

(2) Nuisance. It shall be the responsibility of each Owner and Resident to

prevent the creation or maintenance of a nuisance in, on or about the Project. The term "nuisance" includes but is not limited to the following:

a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about his Lot and appurtenant Common Areas;

b. The storage of any item, property or thing that causes any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

c. The storage of any substance, thing or material upon any Lot or in the Common Areas that emits any foul, unpleasant or noxious odors, or that causes any noise or other condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

d. The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;

e. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

f. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees;

g. Creating or allowing an unreasonable amount of noise or traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.; and

h. Violation of U.C.A., Section 78-38-9 (1999) (i.e., drug houses and drug dealing; gambling; group criminal activity; prostitution; weapons; parties), as it may be amended or supplemented from time to time.

(3) Prohibited Signs and Activities "For Sale" or "For Rent" or other signs or banners are not permitted in the Common Area or so as to be visible from the street, unless approved in writing by the Board. Activities which might tend to cause disorderly, unsightly, or unkempt conditions shall not be pursued or undertaken on any part of the Project.

(4) Removing Garbage, Dust and Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon.

(5) Subdivision of a Lot. No Lot shall be subdivided or partitioned.

(6) Firearms, Incendiary Devices and Graffiti. The use of firearms and

incendiary devices, or the painting of graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

(7) Temporary Structures. No Owner or occupant shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Board.

(8) Trees, Shrubs and Bushes. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the Common Areas. The Board may alter or remove any objects planted or placed in violation of this subsection.

(9) Business Use. No Business Use or Trade may be conducted in or from any Lot unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board. Notwithstanding the above, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-Section.

(10) Storage and Parking of Vehicles. The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:

a. The parking Rules and Regulations adopted by the Board from time to time;

b. The parking areas are not designed for Recreational, Oversized, or Commercial Vehicles (as defined in Article I herein) and the Board has the right to make Rules and Regulations restricting or prohibiting their use within the Project. All such vehicles shall be parked in garages or outside the Project, except for purposes of loading and unloading. Eighteen-wheelers may not be parked within the Project.

c. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, Recreational, Oversized, or Commercial Vehicle or any other transportation device of any kind may be parked or stationed (except for purposes of loading or unloading), in such a manner so as to create an obstacle or potentially dangerous situation, or along any street or road, or in front of any parking amenity, sidewalk, walkway, driving lane, Building or Lot, or in an unauthorized portion of the Common Area.

d. Residents may only park their motor vehicles within their driveways, garages, or in other designated Common Areas.

e. No parking is allowed in "red zones," "fire lanes," or unauthorized areas.

f. Visitors or guests shall park their motor vehicles in Common Areas designated for "guest" or "visitor" parking or in the driveway of the Owner they are visiting. Owners, Residents and Occupants shall not park in "guest" or "visitor" spaces.

g. No Owners or Residents shall disassemble, assemble, repair or restore any vehicle of any kind in, on or about any Lot or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

h. No motor vehicle shall be parked in such a manner as to inhibit or block access to a Building, driving lane, parking space, driveway, garage, entry, exit, or parking area.

i. All parking areas shall be used solely for the parking of motor vehicles used for personal transportation. Disabled or inoperable vehicles, motor vehicles not currently licensed or registered, or vehicles with more than \$1,000 damage may not be stored in the street, driveway, or other place so as to be visible to the general public or Residents of the Project.

j. No garage may be used or altered so that it parks less than the number of motor vehicles for which it was originally designed.

k. The nature of the intended use of a garage as a parking garage for motor vehicles may not be changed or altered without the prior express written consent of the Board.

l. Vehicles parked in violation of this Declaration or parking Rules and Regulations adopted by the Board may be immobilized, impounded, and towed **WITHOUT ADDITIONAL NOTICE** and at the Owner's sole expense. By virtue of bringing a motor vehicle on to the Property, the driver agrees to indemnify, save and hold the Association, Board and members of the Board harmless from any loss, damage or claim caused by or arising out of the immobilizing, impounding, or towing of a motor vehicle pursuant hereto.

(11) Bicycles. Bicycles in the Common Areas must be parked or stored in the bicycle racks or storage areas designated by the Board.

(12) Aerials, Antennas, and Satellite Systems. Antennas and satellite dishes shall be prohibited within the Property, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multi point distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is located within the Lot or another location approved by the Board. Permitted Devices attached to a Building or mounted on the patio, balcony, or deck must extend no higher than the eaves of that portion of the roof of the Dwelling directly in front of such antenna or

dish. The Board may adopt Rules and Regulations establishing a preferred hierarchy of alternative locations and requiring screening of all Permitted Devices, so long as such Rules and Regulations do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device. Anything to the contrary notwithstanding, it is the intent of this document to at all times comply with the applicable federal, state and local laws, and regulations adopted by the FCC – as they may be amended from time to time. **DO NOT INSTALL AN ANTENNA OR SATELLITE DISH OUTSIDE YOUR LOT OR IN THE COMMON AREA WITHOUT FOLLOWING THE PROVISIONS OF THIS SECTION.** Antennas or Satellite dishes installed by an Owner or resident in violation of this section may be removed by the Board without further notice or warning and at the owner's sole risk and expense.

(13) Window Coverings. No-aluminum foil, newspapers, reflective film coatings, sheets, bedspreads, or any other similar materials may be used to cover the exterior windows of any residential structure on a Lot. Sunshades are not allowed on the exterior of any Building.

(14) Windows. All windows and window units in the Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction.

(15) Pets. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two (2) domestic pets per Lot are allowed; however, the Board may adopt Rules and Regulations regarding restrictions on size and weight of pets. Pets must be properly licensed and registered by the appropriate governmental agency where required. Pets may not create a nuisance. The following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) defecating on any common area when the feces are not immediately cleaned up by the responsible party; (e) barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb other reasonable residents or interfering with their right to the peaceful and quiet enjoyment of their property; (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents; or (j) a violation of the City pet ordinance. Pets in the Common Area must be in a cage or on a leash and under the control of a responsible person. Pets may not be tied, tethered or left unattended in the Common Area. The Board may establish Pet Rules and charge a pet deposit and/or a registration fee.

(16) Wildlife. Capturing, trapping or killing wildlife within the Property is prohibited, except in circumstances posing an imminent threat to the safety of persons or pets using the Property.

(17) Vegetation. Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Property or which result in unreasonable levels of sound or light pollution are prohibited.

(18) Lubricants, Oil and Gas. Disposal of any oil, gas, or lubricants, and

the storage or disposal of other hazardous materials (as may be determined in the Board's reasonable discretion and as defined by applicable law) anywhere within the Property is prohibited.

(19) Electronic Transmitters. No electronic or radio transmitter of any kind, other than garage door openers, shall be located or operated in or on the Property without the prior consent of the Board.

(20) Erosion, Dust or Pollen. Behavior which causes erosion or unreasonable amounts of dust or pollen is prohibited.

(21) Driveway, Entry, Deck, Patio and Balcony. The Board may adopt reasonable Rules and Regulations to regulate and control the appearance and use of driveways, entries, decks, patios, and balconies within the Project, including by way of illustration but not limitation a regulation limiting items on the patio to "patio furniture"; prohibiting clotheslines and the hanging of clothes and other items over the railings; planters and plants; and the storage of personal property, furnishings, appliances, junk, boxes, furniture, and effects in public view.

(22) Insurance. Nothing shall be done or kept in, on or about any Lot or in the Common Areas and Facilities which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Board, but for such activity, would pay.

(23) Laws. Nothing shall be done or kept in, on or about any Lot or Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(24) Damage or Waste. No damage shall be caused to, or waste of, the Common Area and Facilities by any Owner or Resident, or their family members, guests or invitees; and each Owner and Resident shall indemnify and hold the Board and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner or Resident, or their family members, guests or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner.

(25) Structural Alterations. Except in the case of an emergency repair, no structural alterations, plumbing, electrical or similar work within the Common Area and Facilities be done or permitted by any Owner without the prior, express written consent of the Board. Structural alterations within the footprint of the Building or Roof as shown on the Plat Map may be authorized by the unanimous consent of the Board (and governmental agency responsible for the issuing of all building permits, licenses, etc.), and the additional approval of the other Lot Owners shall not be required.

7. Lease Restrictions and Limitation of Lot Ownership. No owner shall be permitted to lease his Dwelling for short term, transient, hotel, vacation, seasonal or corporate purposes, which for purposes of this Section shall be deemed to be any rental with an initial term of less than six (6) months. Daily or weekly rentals, and rentals for less than thirty (30) days, are prohibited. No Owner may lease individual rooms to separate persons or less than his entire Dwelling, including, by way of



illustration but not limitation, to domestic help or a caretaker, without written notice to and the written consent of the Board. The Association or the Board may require that Owners use lease forms approved by the Board (or include specific terms in their leases), and may impose a review or administration fee on the lease or transfer of any Lot or Dwelling. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Dwelling.

8. Liability of Owners and Residents For Damages. Each Owner or Resident shall be liable to the Association, or other Owners or Residents for damages to person or property in the Community caused by his negligence.

9. Encroachments. If any portion of Common Area or a Lot encroaches or comes to encroach upon other Common Area or a Lot as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

10. Governing Board. The Association shall be managed by a Board comprised of three (3) Lot Owners who shall be duly qualified and elected, except that during the Period of Declarant Control the Board need not be comprised of Lot Owners.

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

(a) Access. The Board or Manager shall have the right to have access to each Lot, Building and the Common Areas and Facilities, including the main gas and sewer line or lines located within the Buildings: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Lot being entered, as may be necessary for the maintenance, repair, or replacement of any of the Common Areas and Facilities; and (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Lot or Lots, provided that a reasonable effort is made to provide notice to the occupant of the Lot prior to entry. For purposes of this subsection the term "emergency" means an event or occurrence, which threatens to cause substantial and imminent damage to person or property.

(b) Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

(c) Execute Documents. The authority to execute and record, on behalf of all

Owners, any amendment to the Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment.

(d) Standing. The power to sue and be sued.

(e) Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

(f) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer, in accordance with the Utah Revised Nonprofit Corporation Act, any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Eligible Votes of the Association Members.

(g) To Add or Purchase Property. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Eligible Votes of the Association Members.

(h) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with applicable law and this Declaration.

(i) Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners or Residents not on the Board, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Board meetings.

(j) Delegation of Authority. The power and authority to delegate its responsibilities over the management and control of the Common Areas and regulation of the Project to a professional Manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

(k) Common Area Expense. Pay all Common Area water bills and other bills associated with the Common Area; Owners will be responsible for the water bills for the landscaping maintenance on their Lots and that portion of the Common Area in the front of their Home.

(l) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions on behalf of the Owners.

12. Delegation of Management Responsibilities. The Board may delegate some of its management responsibilities to a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor or an Owner. The termination provision

of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The Board may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities.

13. Owners Meetings. The Association shall meet at least annually at a time and place set by the Board.

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

15. Assumption of Risk. The Association may, but shall not be obligated to, sponsor certain activities or provide facilities designed to promote the health, safety, and welfare of Owners and Residents; there are Common Areas in the Project; in, near, or about the Project there are utility lines or utility substations; there are also improvements of a less significant nature. Notwithstanding anything contained herein or in any of the Project Documents, neither the Association, Board, Members of the Board, Officers of the Association, Manager, nor the Declarant shall be liable or legally responsible for, or in any manner a guarantor or insurer of the health, safety or welfare of any Owner or Resident of any Lot or his family members, tenants, guests, or invitees while at the Project, or for any property of any such Persons. Each such Person by accepting a deed or other document of conveyance to a Lot or coming onto the Property hereby assumes all risks associated with the use and enjoyment of the Project, including negligent acts. No provision of the Project Documents shall be interpreted as creating a duty of the Association, Board, Members of the Board, Officers of the Association, Manager, or the Declarant to protect or further the health, safety, or welfare of any Person(s), even if the funds of the Association are used for any such purpose. Each Owner by virtue of his acceptance of title to his Lot and each other Person having an interest in or lien upon, or making any use of, any portion of the Project (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, Board, Members of the Board, Officers of the Association, Manager, and the Declarant, and their employees, agents, contractors, subcontractors, successors, and assigns from or connected with the foregoing items.

16. Capital Improvements. All expenses for Capital Improvements shall be governed by

and subject to the following conditions, limitations and restrictions:

(a) Board Discretion/Expenditure Limit. Any Capital Improvement to the Project which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be authorized by the Board alone (the "Capital Improvement Ceiling").

(b) Expenditure Limit With Consent of Owners. Any Capital Improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the Eligible Votes of the Members.

(c) Improvements Changing the Nature of the Project. Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the Eligible Votes of the Members.

17. Recycling Programs. The Board may establish a recycling program and recycling center within the Project, and in such event all Residents of Lots shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

18. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include snow removal, landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. Project water charges and storm water fees shall be paid as a Common Expense.

19. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Building will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

20. Architectural Review Committee. During the Period of Declarant Control, the Declarant shall act as the Architectural Review Committee and reserves to itself and is hereby granted the sole right and exclusive authority to make all architectural related decisions in this Project in order to insure the harmony of design and quality of construction and materials. Following the Period of Declarant Control the Board shall act as the Architectural Control

Committee ("ARC"). All architectural designs, plans, fencing, specifications and construction materials must be reviewed and approved by the Architectural Review Committee in writing, and must be consistent with, in congruity with and not in conflict with the Development Agreement with the City, if any. In the event of any conflict, inconsistency or incongruity, the provisions of the Development Agreement shall in all respects govern and control. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for review and approval. Information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction should be submitted if applicable. Designs submitted for approval shall be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process.

(a) Review Considerations Generally. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things.

(b) Aesthetics. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner, by virtue of his acceptance of a deed to a Lot or other document of conveyance, acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

(c) Minimum Requirements For A Home. No Home shall be constructed or altered unless it meets the following minimum requirements:

- 1) All Homes shall be single-family dwellings with a two-car garage.
- 2) The height of any Home shall not exceed two stories above ground.
- 3) No slab on grade Homes are permitted.
- 4) Each Home shall be built with a basement.
- 5) Home exteriors must comply with the City approvals for construction materials. No aluminum or vinyl is permitted.
- 6) Any detached accessory building must conform in design and materials with the primary residential Home.
- 7) No tin sheds are allowed.
- 8) Any and all plans and specifications for additions to a Home or for an Accessory Building must be submitted, reviewed and approved in writing in advance by the ARC.
- 9) All Lots shall be fully landscaped in accordance with subsection (f) and Section 9 set forth below.

10) No fence or similar structure shall be placed in any front yard. No fence or similar structure shall be placed in any side or rear yard in excess of six (6) feet. Vinyl fencing is allowed without additional approval required. Chain link fencing is strictly prohibited. If there is a dispute as to what constitutes the front, side or rear yards, or whether a variance has been granted, the decision of the ARC shall be final, binding and conclusive.

11) Conditional uses may be allowed for a swimming pool, cabana, equipment building, outdoor recreational activities, such as an athletic court, tennis courts, basketball court, soccer pitch, batting cage, and so forth.

(d) Preliminary Architectural Drawings, Plans and Specifications. The ARC may require, as a minimum, the following additional items:

1) Plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.

2) Floor plans of each floor level to scale.

3) Elevations to scale of all sides of the Home.

4) One major section through Home.

5) A perspective (optional).

6) Specifications of all outside materials to be used on the exterior of the Home.

(e) Final Plans and Specifications and Working Drawings. The ARC may also require, as a minimum, the following:

1) Plot plans to scale showing the entire site, building, garages, walks, drives, fence, carriage lights, retaining walls, with elevations of the existing and finished grade and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

2) Detailed floor plans.

3) Detailed elevations, indicating all materials and showing existing and finished grades.

4) Detailed sections, cross and longitudinal.

5) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc. Specifications shall give complete description of materials to be used with supplements, addenda or riders noting the colors of all materials to be used on the exterior of the Home.

(f) Landscaping. All Lot landscaping, grading, and drainage is subject to the following covenants, conditions, restrictions and easements, and shall be completed strictly in accordance with any Landscaping Guidelines that might be adopted by the Board and so as to comply with and not impair all applicable ordinances and flood control requirements. All rear Lot landscaping must be completed within one (1) year of the date of closing. The Owner is responsible for the initial planting of trees. Trees, lawns, shrubs, or other plantings placed on a Lot shall be properly nurtured, maintained and replaced by the Owner. Any weeds or diseased or dead lawn, trees, ground cover, bushes or shrubs shall be removed and replaced. The landscaping of a Lot may not adversely affect the value or use of any other property or detract from the original design scheme and appearance of the Project.

(g) Accessory Buildings. Accessory Buildings are considered “conditional uses,” which require the approval of the City and the ARC. Each application to construct or install an Accessory Building will be evaluated separately by the ARC and approved or disapproved on a case-by-case basis, subject to the following guidelines:

1) Any detached Accessory Building must conform in design and construction materials with the primary residential Home.

2) The maximum height of an Accessory Building shall be eight (8) feet, (although the ARC may grant an exception if, in its sole opinion, such is in the best interest of the Project);

3) If there is a dispute of any kind whatsoever, such as whether a structure is an Accessory Building, the decision of the Declarant, or upon the termination of the Period of Declarant’s Control, the Architectural Review Committee, shall be final, conclusive and binding.

(h) Approval. In the event that the ARC fails to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be considered approved, subject to the minimum requirements as set forth herein.

(j) No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

(k) Variance. The ARC may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations, and prior written consent of the City Board of Adjustment. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c)

estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

(l) Limitation of Liability. Neither the Declarant nor the ARC, or any of their employees, agents, representatives or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. By accepting a deed or other document of conveyance to a Lot, each Owner agrees to and shall defend, indemnify, save and hold the Declarant and the ARC, and their employees, agents, representatives or consultants, harmless from any and all loss, damage or liability they may suffer, including defense costs and attorney fees, as a result of any claims, demands, actions, costs, expenses, awards or judgments arising out of their review or approval of architectural designs, plans and specifications.

(m) Enforcement of Architectural Guidelines. Any construction, alteration, or other work done in violation of this Declaration shall be considered to be nonconforming. Upon written request from the ARC an Owner shall at his own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser.

(n) Contractors. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration may be excluded by the ARC from the Project, subject to the notice and the opportunity to be heard. In the event of sanctions after notice and hearing, neither the ARC or the Declarant, nor their employees, agents, representatives or consultants shall be held liable to any person for exercising the rights granted by this Section.

(o) Garbett Homes Catalogue. Any and every home design, plan or specification contained within the Garbett Homes Catalogue shall be considered approved and qualify for construction, and no other consent shall be required, provided the home elevations meet and the home otherwise satisfies all of the architectural control requirements of the City ordinances. Any and all deviations from the Garbett Homes Catalogue, including by way of illustration but not limitation, design, construction materials and coloration, must be expressly approved in writing by the ARC: The approval of the Garbett Homes Sales staff and/or construction personnel is insufficient.

(p) Architectural Controls of Exterior Changes. No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior express written approval of the Board of Directors or ARC established by the Board of Directors for that purpose. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, geothermal products, wind turbines or other alternate energy



resources, shade screens, awnings, window coating or tinting, decorative alterations, and other work that in any way alters the exterior appearance of the Property. The Board of Directors or ARC if established by the Board of Directors for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Board of Directors. Such designations shall be for the purpose of achieving uniformity of appearance and preservation and enhancement of property values.

21. The Maintenance Responsibility of the Association. The Association shall maintain, replace, and keep in a state of good repair the following items (collectively “Area of Common Responsibility”):

- (a) the Private Lane including snow removal, repair, maintenance and replacement as required;
- (b) all Common Area;
- (c) all landscaping, trees, bushes, shrubs, planting beds, flower beds, grass and other plant life in the Common Area and public utility easements;
- (d) all common water service and drainage facilities;
- (e) all walls and fences which serve as common walls or fences for the Project located so as to be part of the Common Area;
- (f) all landscaping and irrigation systems in the Common Areas;
- (g) all common signage;

22. The Maintenance Responsibility of the Owners. Each Owner shall maintain, repair and replace his Lot, Home, and all other landscape and physical improvements to his Lot not part of the Common Area of Responsibility (the “Area of Personal Responsibility”). Each Owner or Resident shall keep his patio, balcony, deck, driveway, parking and storage spaces broom clean and free of debris.

23. Garbage Removal and Snow Removal. Garbage pick-up and removal shall be arranged by each Owner through Salt Lake City. The Association shall arrange for snow removal from the Private Lane. Each Owner or Resident is solely responsible for snow and ice removal from his Lot.

24. Standard of Care – Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition, consistent with the Community Wide Standard. If a dispute arises between a Lot Owner or a Resident as to the condition of a Lot, the decision of the Board shall be final and conclusive.

25. Standard of Care – Landscaping. All landscaping, if any, permitted by the Board in Common Areas shall be maintained and cared for in a manner consistent with the Community Wide Standard and the quality of design and construction originally established by Declarant. Specific

guidelines and restrictions on landscaping may be established by the Board from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be properly pruned and trimmed. In short, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project.

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

(a) Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board. The Owner shall have ten (10) days after receipt of notice within which to complete the maintenance, replacement or repair, or if the maintenance, replacement or repair is not capable of completion within such time period, to commence the maintenance, replacement or repair within ten (10) days.

(b) Emergency Situation. If the Board determines that an emergency exists, then notice and the opportunity to cure the default is not necessary.

(c) Optional Repairs. The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

(d) Costs and Expenses. Costs incurred by the Association in the performance of an item included in the Area of Personal Responsibility shall be added to and become a part of the Assessment to which such Owner and Lot is subject, and shall be secured by a lien against his Lot regardless of whether a notice of lien is filed

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

28. Alterations to the Common Area. Anything to the contrary notwithstanding and until the termination of the Period of Declarant's Control, the Declarant may make changes to the Common Area without the consent of either the Association or the Board. No Owner or Resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the Building or Common Area or Facilities, including but not limited to the construction or installation of any additions, and the extension or enclosure of any existing structures (e.g., fencing, decks, patios, walkways or sheds, etc.) not shown on the approved plans and specifications, without the prior written consent of the Board.

29. Common Expenses. Each Owner shall pay his Assessments subject to and in accordance with the procedures set forth below.

(a) Declarant. During the Period of Declarant Control, the following shall apply: (1) The Declarant, builder, contractor, investor, or other person or entity who purchases a Lot for the purpose of constructing improvements thereon for resale to an Owner, shall pay no assessment unless a Dwelling Unit constructed on a Lot is occupied for a residence on a permanent or part-time basis, provided that Declarant or its assigns shall have the obligation to subsidize the Association until control of the Association passes to the Owners; (2) Subsidization shall be defined as the payment of the reasonable cash needs of the Association for ordinary and necessary maintenance expenses and a reasonable contribution to reserves; (3) In no event, however, shall the subsidy exceed the monthly or annual assessments; (4) This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these; and (5) The Declarant shall not be subject to Special or Individual Assessments.

(b) Purpose of Common Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board. In addition, the Assessments provided for herein shall be used for the general purpose of maintaining the Private Lane.

(c) Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Board shall prepare and deliver to the Owners a proposed Budget:

(1) Itemization. The Budget shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

(2) Basis. The Budget shall be based upon advance estimates of cash requirements by the Board to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, and regulation of the Association, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board is required or permitted to maintain, common lighting and heating, common water charges, trash collection, storm drain fees, common sewer charges, sewer maintenance costs, carpeting, painting, repairs and maintenance of the Common Areas, and replacement of those elements of the Common Areas, that must be replaced on a periodic basis, wages for Board employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

(3) The Owners may call a special meeting within forty-five (45) days of the meeting providing the proposed Budget to vote to disapprove the Budget, although to set it aside and to reject a proposed Budget requires the affirmative written consent of at least a majority of total ownership. If the new budget is disapproved, then the prior year's budget continues.

(d) Apportionment. The common profits, losses and voting rights of the Project shall be distributed among, and the common expenses shall be charged to, the Lot Owners equally and uniformly.

(e) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the Eligible Votes of the Members. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Board fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

(f) Payment of Assessments. The Board has the sole authority and discretion to determine how and when the Assessments are paid.

(g) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (1) the Owner of both the legal and equitable interest in any Lot; (2) the owner of record in the offices of the County Recorder of Salt Lake County, Utah; and (3) both the Buyer and Seller under any executory sales contract or other similar instrument.

(h) Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Board may from time to time effect an equitable change in the amount of said payments, but, without the prior approval of a majority of the Eligible Votes of the Members of the Association, not greater than fifteen (15%) percent of the Assessment in any calendar year. Owners shall be given at least thirty (30) days written notice of any changes.

(i) Re-assessment. If a Lot fails to pay its Assessment, the Board of Directors may re-assess that sum among all of the Owners on a proportionate basis.

(j) Reserve Account(s). The Association shall prepare or have prepared a Reserve Analysis or Study as required by statute. The Board shall establish and maintain a Reserve Account or Accounts in accordance with Utah law. The Reserve Account or accounts shall be funded out of regular Assessments, Special Assessments (if necessary) and the contributions from the Working Capital Fund. The Board shall dedicate a portion of the monthly Assessment for the Reserve Account or accounts. The Board shall update its Reserve Study as required by statute. The

Board shall present the Reserve Study (and updates) and the status of the Reserve Accounts at the Annual Meeting of Owners each year, and make copies available to all Owners upon request.

(k) Statement of Assessments Due. Upon written request, the Board shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$35.00 for the issuance of such certificate.

(l) Providing Payoff Information.

(1) The Association may charge a fee for providing Association payoff information needed in connection with the closing of a Unit Owner's financing, refinancing, or sale of the Owner's Unit (the "Payoff Fee").

(2) The Association may not require that the Payoff Fee be paid before closing and the Payoff Fee may not exceed the statutory limit.

(3) If the Association fails to provide the payoff information requested within five (5) business days after the closing agent requests the information may not enforce a lien against that Unit for money due to the association at closing; provided, however, a request shall not be considered effective unless the request is conveyed in writing to the designated contact person for the Association on record with the State of Utah and contains: (a) the name, telephone number, and address of the person making the request; and (b) the facsimile number or email address for delivery of the payoff information; and (c) is accompanied by a written consent for the release of the payoff information: (i) identifying the person requesting the information as a person to whom the payoff information may be released; and (ii) signed and dated by an Owner of the Unit for which the payoff information is requested.

(n) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which, insofar as it adversely affects the Association's lien securing unpaid Assessments, each Owner, by accepting a deed or other document of conveyance to a Lot, hereby subordinates and waives.

30. Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws. The Annual Assessment shall be payable in twelve (12) equal monthly installments due on the first day of each month. The Annual Assessment shall be based upon the Budget prepared by the Board. The Board shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein, by a majority vote of the Board.

31. Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

(a) Board Based Assessment. So long as the special assessment does not exceed

the sum of Five Hundred and 00/100ths Dollars (\$500.00) (the "Special Assessment Limit") per Lot in any one fiscal year, the Board may impose the special assessment without any additional approval.

(b) Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the Eligible Votes of the Members of the Association. The Board in its discretion may allow any special assessment to be paid in installments.

32. Individual Assessments. Individual Assessments shall be levied by the Board against a Lot and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Board in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Area for which the Lot Owner is responsible; (c) any other charge, fee, fine, dues, expense, or cost designated as an Individual Assessment in the Project Documents or by the Board; and (d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

33. Collection of Assessments. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10<sup>th</sup> day of the month in which they were due.

(a) Delinquent Accounts. Any Assessment not paid when due shall be deemed delinquent.

(b) Late Fees and Default Interest. A late fee in an amount set by the Board shall be assessed on all tardy payments. Simple interest at a rate set by the Board shall accrue on all outstanding balances.

(c) Lien. If any Lot Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses, when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Board or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(d) Foreclosure of Lien and/or Collection Action. If the Assessments remain unpaid, the Association may, as determined by the Board, institute suit to collect the amounts due and/or to foreclose the lien.

(e) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

(f) No Waiver. No Owner may waive or otherwise exempt himself or herself

from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Lot.

(g) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

(h) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(i) Trust Deed for Assessments. By acceptance of a deed for a Lot, each Owner as Trustor conveys and warrants to Trustee in trust for the Association, as Beneficiary, with power of sale, the Owner's Lot and appurtenant Common Area, and all improvements thereon for the purpose of securing payment of all Assessments (including basis of collection) provided for in this Declaration. For purposes of this Section and Utah Code Ann. §§57-1-19, *et seq.*, as amended from time to time, the Trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the Trustee by recording an "Appointment of Trustee" on the records of the local County Recorder. Each Owner hereby also grants to the Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§57-1-19, *et seq.*

(1) A Lot may be auctioned publically and sold through either a non-judicial foreclosure (like a bank foreclosing a deed of trust) or through judicial foreclosure. A court order of sale is required for a judicial foreclosure, which includes a 6-month redemption period.

(2) For purposes of a non-judicial foreclosure, when a person accepts a deed or other document of conveyance to a Lot, it is considered the same, like a bank and a deed of trust, as conveying the Lot in trust to as trustee<sup>2</sup> appointed by the Association to secure payment of all assessments and costs of collection.

(3) The Association must appoint a qualified trustee, by signing and recording in the office of the county recorder a written substitution of trustee form in order to foreclose upon a Lot non-judicially.<sup>3</sup>

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<sup>2</sup> Bank, Title Company or Utah attorney

<sup>3</sup> No redemption period. A notice of default is prepared and recorded. The Owner has 90 days to cure the default or

(4) At least thirty (30) days prior to starting its non-judicial foreclosure, the Association must send written notice to the Owner informing him or her of the Association's intent to foreclose non-judicially and the Owner's right to demand judicial foreclosure. The notice must be in the form provided by the statute and sent by certified mail.<sup>4</sup> The Owner may object to the non-judicial foreclosure by sending a written demand for judicial foreclosure. The Owner's objection and written demand must be sent within fifteen (15) days. The Owner's objection and written demand must also be sent by certified mail.

(5) The Association may not use a non-judicial foreclosure to enforce a lien if the Owner mails the Association a written demand for judicial foreclosure: (a) by U.S. mail, certified with a return receipt requested; (b) to the address stated in the Association's Notice of Non-judicial Foreclosure and Right to Demand Judicial Foreclosure under Subsection (4); and (c) within fifteen (15) days after the date of the postmark on the envelope of the Association's Notice of Non-judicial Foreclosure and Right to Demand Judicial Foreclosure.

(6) The Association must follow the provisions of the law applicable to the non-judicial foreclosure of deeds of trust.

(j) Discontinuance of Common Utility Service and Suspension of Common Facility Use. If an Owner fails or refuses to pay an Assessment when due, the Board may, after giving notice and an opportunity to be heard as provided for below, terminate an Owner's right;

(1) to receive utility services paid as a Common Expense; and

Before terminating utility services or right of access and use of Common Area, the Manager or Board shall give written notice to the Owner in the manner provided in the Bylaws. The notice shall inform the Owner (i) that utility service or right of access and use of recreational facilities will be terminated if payment of the Assessment is not received within thirty (30) days; (ii) of the amount

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the Unit may be sold by the Trustee. The notice of sale usually takes 30+ days. A non-judicial foreclosure takes approximately 120 days.

<sup>4</sup>NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE

The (insert the name of the association of unit owners), the association for the project in which your unit is located, intends to foreclose upon your unit and allocated interest in the common areas and facilities using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the association's lien against your unit and to collect the amount of an unpaid assessment against your unit, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that "I demand a judicial foreclosure proceeding upon my unit", or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within fifteen (15) days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is (insert the address of the association of unit owners for receipt of a demand).



of the Assessment due, including any interest or late payment fee; and (iii) of the right to request a hearing as provided for in this Section. An Owner who is given notice may request an informal hearing to dispute the Assessment by submitting a written request to the Board within fourteen (14) days after the date on which the Owner receives the notice. The hearing shall be conducted by the Board in accordance with the standards provided in the Bylaws. If a hearing is requested, utility services or right of access and use of Common Area may not be terminated until after the hearing has been conducted and a final decision has been entered. Upon payment of the Assessment due, including any interest or late payment fee, the Manager or Board shall immediately take action to reinstate the terminated utility services and right of access and use of recreational facilities.

34. Working Capital Fund. A Working Capital Fund shall be established by the Declarant. Each Lot's initial share of the Working Capital Fund shall be collected and transferred to the Board at the time of closing of the sale of each such Lot by Declarant and shall be equal to 3 times the monthly HOA dues. (the "Working Capital Payment"). Notwithstanding the foregoing, the contribution to the Working Capital Fund for each unsold Lot shall be paid to the Board at the time a certificate of permanent occupancy is issued and such Lot is first occupied for residential purposes. With respect to each Lot for which the Declarant pays the contribution to the Working Capital Fund, the Declarant may, at its election, be reimbursed for such contribution by the buyer of such Lot at the time of closing. Thereafter, each time a Lot is sold and conveyed, the Board shall collect a Working Capital Payment at the time of the closing of the transaction. The purpose of the Working Capital Fund is to function as an impact or transfer fee, to insure that the Board will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of the Project. Sums paid into the Working Capital Fund are not to be considered as advance payments or regular monthly payments of Common Expenses.

35. Reinvestment Fee. The Association may change a reinvestment fee in accordance with statute.

36. Future Rent Payments. If the Owner of a Lot who is leasing the Lot fails to pay an Assessment for more than sixty (60) days after the Assessment is due, the Board, upon compliance with this Section, may demand that the tenant pay to the Association all future rent payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant under this Section. The notice shall (i) provide notice to the tenant that full payment of the remaining rent payments will begin with the next monthly or other periodic payment unless the Assessment is received within the time period provided in the Declaration, Bylaws, or Association Rules and Regulations; (ii) state the amount of the Assessment due, including any interest or late payment fee; (iii) state that any costs of collection, not to exceed the statutory limit, and other Assessments that become due may be added to the total amount due; and (iv) provide the requirements and rights described in this Section. If the Owner fails to pay the Assessment due by the date specified in the notice, the Manager or Board may deliver written notice to the tenant that demands future payments due to the Owner be paid to the Association pursuant to this Section. The Manager or Board shall mail a copy of the notice to the Owner. The notice provided to the tenant under this Section shall state: (i) that due to the Owner's failure to pay the Assessment within the time period allowed, the Owner has been notified of the intent of the Board to collect all rent payments due to the Owner; (ii) that until notification by the Association that the

Assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future rent payments due to the Owner; and (iii) that payment by the tenant to the Association in compliance with this Section will not constitute a default under the terms of the lease agreement. If a tenant makes payments in compliance with this Section, the Owner may not initiate an action against the tenant. All funds paid to the Association pursuant to this Section shall be (i) deposited in a separate account; and (ii) disbursed to the Association until the Assessment due, together with any cost of administration which may not exceed the statutory limit if paid in full.

Any remaining balance shall be paid to the Owner within five (5) business days after payment in full to the Association. Within five (5) business days after payment in full of the Assessment, including any interest or late payment fee, the Manager or Board shall mail a copy of such notification to the Owner.

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

38. Insurance. The Manager, Board or Association shall obtain insurance against loss or damage by fire and other hazards for the full cost of replacement for: (a) all Common Areas and Facilities; and (b) all Buildings that contain more than one Dwelling Unit, including any improvement which is a permanent part of a Building. The insurance coverage shall be written on the property in the name of the Manager, Board or Association, as trustee for each of the Unit Owners in the percentages established in this Declaration. The insurance premiums shall be a Common Expense. This Section is without prejudice to the right of each Unit Owner to insure his own Unit for his benefit. The Manager, Board or Association shall satisfy at least the following minimum requirements:

(a) Property Insurance. Blanket property insurance using the standard "Special" or "All Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard "planned unit development" casualty policy. This additional coverage may be added by the Board as it deems necessary in its best judgment and in its sole discretion.

(b) Flood Insurance. If any part of the Project's improvements are in a Special Flood Hazard Area – which is designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map (FIRM) – the Association shall obtain a “master” or “blanket” policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any common element buildings and any other common property. The Lot Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.

(c) Liability Insurance. A public liability policy covering the Common Area, sewer laterals, including the backup of sewer laterals, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

(d) Directors and Officers Insurance. A director's and officer's liability or errors and omissions policy, if reasonably available, with at least One Million (\$1,000,000) Dollars in coverage.

(e) Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Board to cover all non-compensated officers as well as all employees for theft of Association funds.

(f) Earthquake Insurance shall not be required unless requested by at least seventy- five percent (75%) of the Eligible Votes of the Members of the Association.

(g) Right to Adjust Claims. The Board may adjust claims and is hereby granted the right to refuse to submit the claim of a Lot Owner or Resident if: (a) the submittal threatens to cancel the Association's insurance coverage or to substantially increase its premiums, (b) the claim occurred on the Lot of the claimant or the claim was caused by an item under claimant's control, the negligence of the claimant or his failure to perform a maintenance duty required hereby, and (d) it is probable that the claim is covered by the claimant's insurance. The Board may require that the claim be submitted first to the insurance carrier of the claimant and it be formally and unconditionally rejected or denied by his insurer in writing.

(h) Owner's Insurance. Each Owner shall purchase and maintain adequate liability and property insurance, and such other insurance as his independent insurance agent or broker shall recommend.

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

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

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

(1) “Substantial Destruction” shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of Restoration over the funds available is twenty five percent (25%) percent or more of the estimated Restored Value of the Project.

(2) “Partial Destruction” shall mean any other damage or destruction to the Project or any part thereof which does not constitute Substantial Destruction.

(3) “Substantial Condemnation” shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of Restoration over the funds available is twenty five (25%) percent or more of the estimated Restored Value of the Project.

(4) “Partial Condemnation” shall mean any other taking by eminent domain or grant or conveyance in lieu thereof which does not constitute Substantial Condemnation.

(5) “Substantial Obsolescence” shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of Restoration over the funds available is twenty five percent (25%) percent or more of the estimated Restored Value of the Project.

(6) “Partial Obsolescence” shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(7) “Restored Value” shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

(8) “Estimated Cost of Restoration” shall mean the estimated costs of restoring the Project to its former condition.

(9) “Available Funds” shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

(b) Determination by Board. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Board shall make a determination as to

whether the excess of Estimated Cost of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Board shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Board may retain and rely upon one or more qualified appraisers or other professionals.

(c) Restoration of the Project. Restoration of the Project shall be undertaken by the Board promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven (67%) percent of the Project's Eligible Votes of the Members and is further consented to by at least fifty-one (51%) percent of the Eligible Mortgagees.

(d) Notices of Destruction or Obsolescence. Within thirty (30) days after the Board has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

(e) Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Board or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective membership interests in the Association. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(f) Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Board may elect to make a Special Assessment in accordance with this Declaration to pay for the deficiency.

(g) Sale of Project. Unless Restoration is accomplished as set forth above, the Project may be sold in accordance with the Utah Revised Nonprofit Corporation Act, as the same may be amended from time to time, in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Plat Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board equally to the Owners. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(h) Authority of Board to Represent Owners in Condemnation or to Restore or Sell. The Board, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

(i) Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

(j) Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

(k) Termination of Legal Status. Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Lot Owners who represent at least sixty-seven (67%) percent of the Eligible Votes of the Members of the Association and by at least fifty-one (51%) percent of the Eligible Mortgagees.

The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by at least sixty-seven (67%) percent of the Eligible Mortgagees. However, implied approval may be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

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

(a) Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained;

(b) Change In Ownership. Any change in Ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose; and

(c) Compliance with Statutes. Any such consent in lieu must also comply with the requirements of the Utah Revised Nonprofit Corporation Act, as amended from time to time.

41. Mortgagee Protection. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value, including by way of illustration but not limitation the security interest in a Lot and its appurtenant interest in the Association, the Common Area. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Lot in foreclosure. The lien or claim against a Lot for unpaid Assessments levied by the Board or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due. In addition:

(a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for

such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for the lien of any Assessments becoming due thereafter.

(b) Books and Records Available for Inspection. The Board or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, Bylaws, and administrative Rules and Regulations concerning the Project, as well as the books, records, and financial statements of the Board and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

(c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

(d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board shall provide, or be deemed to provide hereby, that:

(1) Either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and

(2) No contract may be for an initial term greater than two (2) years.

(e) Eligible Mortgagee Designation. Upon written request to the Board or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(1) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Mortgagee, Insurer or Guarantor.

(2) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, Insurer or Guarantor, which delinquency remains uncured for a period of sixty (60) days.

(3) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board or the Association.

(4) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

42. Amendment. Anything to the contrary notwithstanding, while the Declarant is in control of the Association and prior to the termination of the Period of Declarant's Control, the Declarant may amend the Declaration or Plat Map without any additional consent or approval required. After transition, the affirmative vote of at least sixty-seven percent (67%) of the Eligible Votes of the Members of the Association shall be required and shall be sufficient to amend the Declaration. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

(a) Consent of Eligible Mortgagee. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required for any amendment which would terminate the legal status of the Project; and the consent of at least fifty-one (51%) percent of the Eligible Mortgagees shall be required to:

- (1) redefine any Lot boundaries;
- (2) convert Lots into Common Areas or vice versa;
- (3) reduce the hazard or fidelity insurance requirements;
- (4) impose prohibitions on the leasing of Lots;
- (5) authorize a decision by the Association of fifty (50) or more Lots to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;
- (6) restore or repair the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (7) partition or separate from a Lot the non-exclusive right to access or use the Common Area; or
- (8) authorize any proposed amendment to provisions that expressly benefit mortgage holders, insurers or guarantors.

At least sixty (60) days prior written notice of any proposed amendment shall be given to each and every Mortgagee. If proper notice is given to a Mortgagee or other creditor, then a legal



presumption is created that the Mortgagee and/or creditor consented, absent the delivery of a written objection. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map or the termination of the legal status of the Project if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

43. Declarant's Sales Program. Anything to the contrary notwithstanding, for so long as Declarant continues to own any of the Lots, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Declaration. Until the Declarant has sold all of its Lots or seven years from the date of recording of this Declaration, whichever first occurs (the "Sale's Events Period"), neither the Owners, the Association nor the Board shall interfere with the completion of improvements and sale of all remaining Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

(a) Sales Office and Model Dwellings. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Dwellings at any one time. Such office and/or models may be one or more of the Lots owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

(b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

(c) Common Area Use. Declarant shall have the right to use the Common Areas of the Project.

(d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Until 120 days after the expiration of the Sale's Events Period, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

44. Limitation on Improvements by Association. Until the expiration of the Sale's Events Period, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

45. Completion Obligation. Declarant hereby covenants in favor of each Owner that within two (2) years from the date of any contract of sale:

(a) Lots. Each Lot which an Owner has contracted to purchase and the Building within which such Lot is contained or is to be contained, and the appurtenant Common Area, shall be substantially constructed and ready for use or occupancy (as the case may be); and

(b) Common Area. There shall be substantially completed and usable as part of the Common Areas all planned landscaping, green space, sidewalks, parking facilities, roads, fences, outdoor lighting, other Common Area improvements shown on the Plat Map, and utility lines and conduits adjacent to the Lot or Building in which a Lot is located, and necessary for its use.

46. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots or Buildings in the Project, title to which is vested in Declarant, shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant) herein.

47. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right (as a Class B Member) to select the Members of the Board and may elect to transfer the management of the Project to a Board elected by the Owners. Upon the termination of the Period of Declarant's Control, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date"). Thereupon, the Owners shall call a meeting to elect the Members of the Board to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Board.

48. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

49. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and

every provision of this Declaration.

50. Procedure for Adopting, Repealing or Modifying Rules. The Board of Directors may adopt, amend, modify, create, expand, or enforce rules and regulations as well as architecture and landscape design criteria. The rules, however, are subject to:

- (a) Any express provisions, restrictions and limitations in the Declaration;
- (b) The Business judgment rule<sup>5</sup>; and
- (c) The right of Owners to notice and to disapprove.

Before it adopts or changes a rule or regulation, the Board of Directors must provide the Owners within fifteen (15) days (unless a longer time is mandated by statute) of its meeting advance notice of its intention. Notice is not required in an emergency.<sup>6</sup> The governing board must provide an open forum at a board meeting and provide Owners with a chance to be heard. The Owners may, within sixty (60) days, and by a vote of at least a majority of the total ownership at a special meeting called for this purpose disapprove the proposed rule or regulation.<sup>7</sup>

51. Equal Treatment; Rule Limitations.

(a) The rules must treat similarly situated people the same, although the rules may vary according to the type of service provided.

(b) The rules may not violate the right of Owners to display religious and holiday signs inside their dwelling, although the rules may define the time, place, and manner of displays visible from outside the Dwelling, Unit or Lot.

(c) The rules may not regulate the content of political signs, although the Rules may define the time, place, and manner of displays visible from outside the Dwelling, Unit or Lot.

(d) The rules may not interfere with an Owner's determination of the composition of his or her household, although they may legally require the occupants to be members of a single housekeeping unit and may limit the total number of occupants permitted in a Dwelling, Unit based its size, configuration and a fair use of the common areas.

(e) The rules may not interfere with activities within a Lot or Dwelling Unit if the activity is legal. Limits may be made if the activities are not considered typical for a residential

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<sup>5</sup> The business judgment rule is a presumption of the law that the governing board is acting in best interest of the association and, as a result, the decisions it makes are protected from judicial review in the event there is a loss or the decision turns out to be wrong, so long as the board did not violate its fiduciary duty to act in good faith and not commit a fraud, self-deal or have a conflict of interest, essentially, not to be guilty of intentional misconduct.

<sup>6</sup> Imminent risk of immediate and substantial harm to person or property.

<sup>7</sup> Note: The Board of Directors is NOT required to call a special meeting unless a petition is submitted to it in accordance with the requirements of the Bylaws for a petition to require a special meeting.

neighborhood, or if the activities create an additional expense for the association, or if the activities are dangerous or pose a health concern, or if the activities constitute a nuisance, create unreasonable noise or traffic, or are unsightly or annoying, or create secondary smoke issues.

(f) If federal, state or local law permits, rules may be adopted regulating use or behavior inside a Dwelling, Unit or Lot, including by way of illustration but not limitation smoking, rentals, noise, traffic and nuisance.

(g) The rules may address a variety of matters such as user fees, the availability of the Common Area and Facilities, the denial of access and use of recreational amenities to trespassers, violators, misusers or abusers, the transfer of lots, rental terms, the disposal of personal property, etc.

(h) The rules may regulate the maintenance and use of the Common Area and Facilities, late fees, accruing interest, indemnity, etc.

(i) No rule may be in conflict, inconsistent or incongruent with the Declaration and Bylaws. If any provision of this subsection is held to be illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This subsection will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this subsection will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this subsection. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this subsection, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

52. Enforcement and Right to Recover Attorneys Fees. Should the Association or Board be required to take action to enforce the Declaration, Bylaws or any administrative Rules and Regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

53. Government Financing. Anything to the contrary notwithstanding, if any financing or the guaranty of any financing on a Lot is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Veterans Administration (VA), the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes, and the termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the property, nor material amendment to the Declaration, or merger, may become effective, as to said Agencies, without their prior express written consent.

54. Fines and Sanctions. The Board is authorized to levy fines or other sanctions for violations of the Project Documents.



**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF THE PROPERTY**

The Land described in the foregoing document is located in Salt Lake County, Utah and is described more particularly as follows:

**BOUNDARY DESCRIPTION**

A portion of Lot 3, Block 13, Plat "F", Salt Lake City Survey, more particularly described as follows:

Beginning at a point on the west line of Lot 3, Block 13, Plat "F", Salt Lake City Survey located N0°01'39"E along the lot line 165.08 feet from the Southwest Corner of said lot. Said Lot corner is also located N89°57'37"E along the monument line of 600 South Street 230.56 feet and North 57.43 feet from a Salt Lake County Monument at the intersection of 600 South and 1000 East; thence N0°01'39"E along the lot line 164.25 feet to a fence corner; thence S89°34'00"E along a fence line and extension thereof 165.17 to the east line of said lot; thence S0°02'31"W along the lot line 192.90 feet to the northeast corner of that Real Property described in Deed Book 9282 Page 2007 of the Official Records of Salt Lake County; thence S89°57'40"W along said deed 54.04 feet to the easterly line of McClelland Street; thence N0°02'14"E along said Street 30.01 feet; thence S89°57'41"W 111.08 feet to the point of beginning.

Contains: 0.66+/- acres or 28,636+/- s.f.

Together with a right-of-way over the following:

Beginning at a point located N89°57'40"E along the Block line 101.05 feet from the Southwest Corner of Lot 3, Block 13, Plat "F", Salt Lake City Survey; thence N0°02'11"E 165.08 feet; thence N89°57'41"E 10.00 feet; thence S0°02'14"W 165.08 feet; thence S89°57'40"W 10.00 feet to the point of beginning.

Tax ID #'s: 16-05-452-033 through -037  
16-05-454-037 through -039