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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
HIGHLAND GARDENS TOWN HOME ASSOCIATION,  
A PLANNED UNIT DEVELOPMENT**

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
HIGHLAND GARDENS TOWN HOME ASSOCIATION  
A PLANNED UNIT DEVELOPMENT**

THIS DECLARATION is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by DESTINATION HOMES AT HIGHLAND GARDENS, LLC, a Utah Limited Liability Company, (the "Declarant").

**RECITALS:**

A. Declarant is the record owner of that certain tract of land (the "Town Home Property") in the city of Midvale, county of Salt Lake, state of Utah, which is also known as "Highland Gardens Phase I" and is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof. Declarant desires to create on said Town Home Property a planned residential development with landscaped Town Home Common Areas and Town Home Limited Common Areas.

B. The Town Home Property is desirable for the many amenities and improvements Declarant desires to install and develop. Highland Gardens includes reclaimed property which is more particularly explained in Exhibit D attached hereto and is presented as unique and desirable property for the intended improvements and uses, as well as the covenants, conditions and restrictions set forth herein. Declarant desires to provide for the preservation of the values and amenities of the Town Home Property and for maintenance of the Town Home Common Areas and Town Home Limited Common Areas in the official records of Salt Lake County, state of Utah.

C. Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the Town Home Property, to create an entity which possesses the powers to maintain and administer the Town Home Common Areas and Town Home Limited Common Areas, collect and disburse the assessments and charges provided for in the Declaration and otherwise administer and enforce the provisions of the Declaration as set forth herein. For such purposes, Declarant has caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, Highland Gardens Town Home Owners Association (the "Association").

D. Declarant has deemed it desirable to submit the above described property to a comprehensive development plan and as such has created or caused to be created Highland Gardens Town Home Association. Declarant desires to have this property be sold subject to the covenants, conditions, and restrictions set forth herein and of Highland Gardens Town Home Association.

NOW, THEREFORE, for the foregoing purposes, the Declarant declares that the Town Home Property shall be subject to this Declaration and that the Town Home Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

**ARTICLE I**  
**DEFINITIONS**

When used in this Declaration (including in that portion hereof headed "Recitals"), the following terms shall have the meaning indicated:

**Section 1.1.** Association shall mean Highland Gardens Town Home Owners Association, a Utah nonprofit corporation.

**Section 1.2.** Board shall mean the Board of Directors of the Association.

**Section 1.3.** Declarant shall mean Destination Homes at Highland Gardens, LLC, and its successors and assigns.

**Section 1.4.** Declaration shall mean this Declaration of Covenants, Conditions and Restrictions of Highland Gardens, a Planned Development.

**Section 1.5.** Design Committee shall mean the Design Committee established by and referred to in Article VIII of this Declaration.

**Section 1.6.** Dwelling, Dwelling Unit or Unit shall be used interchangeably and shall mean a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on a Pad and used in conjunction with such residence.

**Section 1.7.** Managing Agent shall mean any person or entity appointed or employed as Managing Agent pursuant to Section 4.1 of Article IV of this Declaration.

**Section 1.8.** Member shall mean and refer to every person who holds membership in the Association.

**Section 1.9.** Mortgage shall mean any mortgage, deed of trust, or trust deed or the act of encumbering any property by a mortgage, deed of trust or trust deed; and mortgagee shall mean any mortgagee of a mortgage and any trustee or beneficiary of a deed of trust or trust deed.

**Section 1.10.** Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Salt Lake County, Utah) of a fee or undivided fee interest in any Unit, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record. Notwithstanding any applicable theory relating to mortgages, no mortgagee shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Unit owned by it.

**Section 1.11.** Pad shall mean and refer to any portion of the land as shown upon the Plat upon which a cluster of Dwelling Units are to be constructed.

**Section 1.12.** Plat shall mean and refer to the Plat, as amended from time to time, of Highland Gardens, a Planned Residential Unit Development, prepared and certified by Ensign Engineering, licensed professional Engineers and Land Surveyors, executed and acknowledged by Declarant, which has been or shall be recorded in the official records of Salt Lake County, Utah, in connection with the Declaration and the Town Home Property.

**Section 1.13.** Roadways shall mean that portion of the Collective Town Home Common Area consisting of the streets and roads within the Town Home Property for the use and benefit of the Owners as such are identified and depicted on the Plat.

**Section 1.14.** Town Home Common Area shall mean all property, owned or designated on the recorded plat as "Town Home Common Area" and/ or that being intended ultimately to be owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto. Generally, the Town Home Common Area consists of the streets and roads and all other improved and or irrigated landscaped areas as more or less depicted on the attached Exhibit C, excluding the Town Home Limited Common Area and the Native Common Area, both defined below.

**Section 1.15.** Town Home Limited Common Area shall mean or refer to those common areas designated on the recorded subdivision as reserved for the use and benefit of each Unit to the exclusion of all other Owners, including, without limitation, driveway approaches to the Units, patios, porches, courts and other areas and improvements appurtenant to and benefitting a particular Unit.

**Section 1.16.** Collective Town Home Common Area shall mean and refer to the Town Home Common Area and the Town Home Limited Common Area.

**Section 1.17.** Town Home Property shall mean the Town Home Property described in Exhibit "A" attached hereto, which includes all land covered by this Declaration, including the Units and the Collective Town Home Common Area.

## ARTICLE II SUBMISSION AND DIVISION OF PROJECT

**Section 2.1. Submission.** The Town Home Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property situated in Salt Lake County, state of Utah, described in Exhibit "A" attached hereto and by this reference made a part hereof. The Town Home Property is being subdivided into thirty two Units, as identified in the Plat.

**Section 2.2** Division into Pads, Town Home Common Area and Town Home Limited Common Area. The Town Home Property is hereby divided into thirty two (32) Units in Phase I, having a fee simple interest in a portion of the Town Home Property as set forth in the Plat. All portions of the Town Home Property not designated as Pads or Units shall constitute the Town Home Common Area, which shall be owned by the Association for the benefit of all Owners in accordance with the provisions of this Declaration, or the Town Home Limited Common Area, which shall be owned by the Association for the benefit of the Owner of the Unit appurtenant to such Town Home Limited Common Area in accordance with the provisions of this Declaration. New or additional property or phases may be added to the Town Home Property at the discretion of the owner of said additional property, the Declarant or its assigns and successors. If a new phase or other property is added and it is not owned by the Declarant or an affiliate of the Declarant, then the Declarant's rights with respect to the new phase shall be vested in the owner of such new phase.

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 3.1. Membership.** Every Owner, upon acquiring title to a Unit, shall automatically become a member of the Association and shall remain a member thereof until such time as his/her ownership of such Unit ceases for any reason, at which time his/her membership in the Association with respect to such Unit shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Unit.

**Section 3.2. Voting Rights.** The Association shall have the following described two classes of Voting membership:

Class A. Class A members shall be all Owners, excluding the Declarant until the Class B membership ceases. Class A members shall be entitled to one vote for each Unit in which the interest required for membership in the Association is held. Accordingly, the total possible number of Class A votes shall be 99.

Class B. Declarant shall be the sole Class B Member. The Class B Member shall be entitled to sixty (60) votes for each Unit which it owns. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

- (a) When the Declarant, or its assigns or successors, no longer owns any Units; or
- (b) December 31, 2020.

**Section 3.4. Multiple Ownership Interests.** In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine



among themselves, but in no event shall more than one Class A vote be cast with respect to any Unit. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Unit concerned unless an objection is made at the meeting by another Owner of the same Unit, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.

**Section 3.5. Record of Ownership.** Every Owner shall promptly cause to be duly filed of record the conveyance document to him/her of his/her Unit and shall file a copy of such conveyance document with the secretary of the Association, who shall maintain a record of ownership of the Units. Any Owner who mortgages his Unit or any interest therein by a Mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the record of ownership.

#### **ARTICLE IV OPERATION AND MAINTENANCE**

**Section 4.1. Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligations and duties to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Town Home Property, the costs of which shall be paid through assessments levied upon the Units and respective Owners as set forth within this Declaration:

- (a) The Association shall accept all Owners as Members of the Association.
- (b) The Association shall accept title to the Collective Town Home Common Area conveyed to it by the Declarant.
- (c) The Association shall provide and be responsible for the management, control, operation, care, maintenance, repair, replacement, and upkeep of the Town Home Common Area, including snow removal and landscaping, and shall keep the same in good, clean, attractive, safe and sanitary condition, unless, until and except to the extent that such responsibility is transferred to and accepted by some other authority, public agency, or utility, and such transfer is agreed to by Members holding at least two-thirds (2/3) of the votes of each class of membership of the Association.
- (d) In addition to maintenance of the Town Home Common Area, the Association shall also provide and be responsible for the limited upkeep of the Town Home Limited Common Area, subject to assessment hereunder as follows: water, mow, cut, prune and replace as needed all lawns, trees, shrubbery, flowers and other landscaping features located on any portion of a Unit which lies between the boundaries of the Unit and the extremities of the Dwelling located thereon, including snow removal. In the event that the need for

maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the Owner shall be obligated to immediately reimburse the Association for the cost thereof. The Owner's obligation to reimburse the Association for the cost of such maintenance or repairs shall be secured by a lien against the Owner's Unit in the same manner as provided in Article V below with respect to Monthly Assessments and Special Assessments. To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments, levied upon any portion of the Town Home Common Areas and Town Home Limited Common Areas; provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(e) The Association shall obtain and maintain in force the policies of insurance required by Article IX of this Declaration.

(f) The Association shall at all times employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Town Home Common Area and Town Home Limited Common Area, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by the Board with cause upon thirty (30) days written notice thereof and at any time without cause or payment of a termination fee upon ninety (90) days written notice thereof, and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent shall be an independent contractor and not an agent or employee of the Association.

**Section 4.2. Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles of Incorporation, together with its general powers as a limited liability company, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Unit for the purpose of maintaining and repairing such Unit or any improvement thereon if for any reason the Owner fails to maintain and repair such Unit or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Unit in violation of Articles VII or VIII of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Town Home Common Area and the Town Home Limited Common Area, as well as its elective duty to provide the same to the Units (to the extent required herein or necessitated by the failure of the Owners of such Units) or in exercising any of its rights to construct improvements or other work upon any of the Town Home Common Area and Town Home Limited Common Area, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than ninety (90) days' written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Town Home Common Area or Town Home Limited Common Area on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or otherwise provide for:

(1) Maintenance, repair and replacement of all appurtenant improvements, including the removal of snow thereon, on such terms and conditions as the Board shall deem appropriate;

(2) Construction, maintenance, repair and replacement of landscaping and improvements (excluding the maintenance, repair and replacement of driveways and sidewalks) upon the Town Home Common Area and Town Home Limited Common Area, including snow removal from driveways and sidewalks on such terms and conditions as the Board shall deem appropriate;

(3) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board, the members of the Design Committee and the Owners;

(4) Such utility services, including (without limitation) culinary water, secondary water, sewer, trash removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;

(5) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(6) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Town Home Property;

(7) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary; and

(c) The Board may delegate to a Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of \$5,000 nor the power to sell, convey, mortgage or encumber any Town Home Common Area or Town Home Limited Common Area.

(d) Upon thirty (30) days prior written notice to the Owner, the Association shall have the power and authority to hire a responsible corporation, partnership, firm, person or other entity, to maintain an Owner's Unit should the Owner thereof fail to properly maintain the same. The cost to maintain a Unit for an Owner shall be charged to the Owner and may be included in the next scheduled monthly assessment to the Owner.

**Section 4.3. Association Rules.** The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things, (a) the use and maintenance the Limited Common Areas; (b) the collection and disposal of refuse; (c) the maintenance of animals on the Town Home Property; and (d) other matters concerning the use and enjoyment of the Town Home Property and the conduct of residents.

**Section 4.4. Limitation of Liability.** No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, the Design Committee or the Managing Agent.

## ARTICLE V ASSESSMENTS

**Section 5.1. Personal Obligation and Lien.** Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Unit, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Unit with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Unit at the time the assessment fails due. No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights in the Town Home Common Areas and Town Home Limited Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid monthly and special assessments, late payment fees, interest and costs of collection which shall be a charge on the Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

**Section 5.2. Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of

the Town Home Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Town Home Common Area and Town Home Limited Common Area; maintenance, repair, and improvements of the Town Home Common Area and Town Home Limited Common Area; management and supervision of the Town Home Common Area and Town Home Limited Common Area; establishing and funding of a reserve to cover major repair or replacement of improvements within the Town Home Common Area and Town Home Limited Common Area; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance, repairs and replacement of those elements of the Town Home Common Area and Town Home Limited Common Area that must be maintained, repaired or replaced on a periodic basis.

**Section 5.3. Monthly Assessments.** The Board shall from time to time and in its discretion set the amount of the monthly assessment in an amount reasonably estimated by the Board to be sufficient to meet the obligations imposed by this Declaration and on the basis specified in Section 5.7 below.

**Section 5.4. Special Assessments.** From and after the date set under Section 5.8 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Town Home Common Area and Town Home Limited Common Area. Any such special assessment must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

**Section 5.5. Special Assessment on Specific Units.** In addition to the monthly assessment and any special assessment authorized pursuant to Section 5.4 above, the Board may levy at any time special assessments (a) on every Unit especially benefited by any improvement to adjacent Roadways, sidewalks, planting areas or other portions of the Town Home Common Area or Town Home Limited Common Area made on the written request of the Owner of the Unit to be charged, (b) on every Unit the Owner or occupant of which shall cause any damage to any of the Common Areas and/or Limited Common Areas necessitating repairs, and (c) on every Unit as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 4.2(a) of Article IV or other provisions of this Declaration. The aggregate amount of any such special assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Units according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises

from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a special assessment against the Units benefited.

**Section 5.6. Uniform Rate of Assessment.** All monthly and special assessments authorized by Section 5.3 or 5.4 above shall be fixed at a uniform rate for all Units; provided, however, that until a Unit has been both fully improved with a Dwelling and occupied for the first time for residential purposes, the monthly assessment applicable to such Unit shall be ten percent (10%) of the monthly assessment which would otherwise apply to such Unit. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Units adversely affected.

**Section 5.7. Monthly Assessment Due Dates.** The monthly assessments provided for herein shall commence as to all Units as of the second month following conveyance to the Association of the Common Areas shown on the Plat. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

**Section 5.8. Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumberer of a Unit and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

**Section 5.9. Effect of Nonpayment - Remedies.** Any assessment not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Unit. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1 1/2%) per month; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Unit, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

**Section 5.10. Subordination of Lien to Mortgages.** The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such first Mortgage or purchaser who comes into possession of a Unit by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Unit; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such

Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Resident Unit from the lien of any assessment thereafter becoming due.

**ARTICLE VI**  
**TOWN HOME PROPERTY RIGHTS AND CONVEYANCES**

**Section 6.1. Easement Concerning Town Home Common Area.** Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Town Home Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Unit. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Town Home Common Area except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others.

**Section 6.2. Easement Concerning Town Home Limited Common Area.** The Association shall have a non-exclusive drainage and public utility easement and an easement for maintenance in and to the Town Home Limited Common Area. With the exception of the rights and easements granted to the Association, the Owner(s) of a Unit shall have the exclusive use of all Town Home Limited Common Areas appurtenant to their Unit. Namely, the driveway, front and/ or rear patio area attached to each Dwelling shall be Town Home Limited Common Area to each such Dwelling.

**Section 6.3. Form of Conveyance; Leases.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit shall describe the interest or estate involved substantially as follows:

Unit No. \_\_\_\_\_ of Highland Gardens, a Planned Unit Development, according to the Plat thereof recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, of the Official Records of Salt Lake County, which Unit is contained within Highland Gardens, a Planned Unit Development identified in the " Declaration of Covenants, Conditions, and Restrictions of Highland Gardens, a Planned Unit Development" recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_; and within Highland Gardens Town Home Association, a Planned Unit Development identified in the "Declaration of Covenants, Conditions, and Restrictions of Highland Gardens Town Home Association, a Planned Unit Development" recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_. SUBJECT TO the covenants, conditions, restrictions, easements, charges and liens provided for in said Declarations of Covenants, Conditions and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Any lease of a Unit shall be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the

Articles of Incorporation and Bylaws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the Lease.

**Section 6.4. Transfer of Title to the Collective Town Home Common Area.** Declarant shall convey to the Association title to the Collective Town Home Common Area free and clear of all liens (other than the lien of current general taxes and the lien of any non-delinquent assessments, charges, or taxes, imposed by governmental or quasi-governmental authorities and the conservation and/or flood plane easement/encumbrance, and anything related thereto, on the Town Home Native Common Area), as the Town Home Common Area and Town Home Limited Common Area are substantially completed.

**Section 6.5. Limitation on Easement.** An Owner's right and easement of use and enjoyment concerning the Town Home Common Area shall be subject to the following:

(a) The right of the Association to govern by rules and regulations the use of the Town Home Common Area for the Owners so as to provide for the enjoyment of said common areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Units by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Town Home Common Area;

(b) The right of the Association to suspend an Owner's right to the use of any amenities included in the Town Home Common Area and/or the Town Home Common Area for any period during which an assessment on such Owner's Unit remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Board;

(c) The right of Salt Lake County and Midvale City, and any other governmental or quasi-governmental body having jurisdiction over the Town Home Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Town Home Common Areas for the purpose of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer any part of the Town Home Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be assented to in writing by (1) all holders of first mortgages secured by Units and (2) the Owners of at least seventy-five percent (75%) of the Units (not including Units owned by Declarant). No such dedication or transfer, however, may take place without the Association first receiving written approval from Midvale City pursuant to all applicable state and city laws, rules and ordinances in effect at the time of such proposed dedication or transfer.



**Section 6.6. Reservation of Access and Utility Easements.** Declarant reserves easements for access, electrical, gas, communications, cable television and other utility purposes and for sewer, drainage and water facilities, (whether servicing the Town Home Property or other premises or both) over, under, along, across and through the Town Home Property, including the attic space of any Unit, together with the right to grant to Midvale City and Salt Lake County, or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across, along and through the Town Home Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Town Home Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Town Home Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Town Home Property immediately prior to the exercise thereof.

**Section 6.7. Easements for Encroachments.** If any part of the Town Home Common Areas or Town Home Limited Common Areas as improved by Declarant now or hereafter encroaches upon any Unit or if any structure constructed by Declarant on any Unit now or hereafter encroaches upon any other Unit or upon any portion of the Town Home Common Area or Town Home Limited Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Unit shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Unit or upon any portion of the Town Home Common Area or Town Home Limited Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

**Section 6.8. Easements for Construction and Development Activities.** Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Town Home Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Dwellings on Units, (b) improvement of the Town Home Common Area and Town Home Limited Common Area, and if any, of the Town Home Native Common Area, and construction, installation and maintenance thereon of Roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (c) construction, installation and maintenance on lands within, adjacent to, or serving the Town Home Property of Roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities. The reservations contained in this paragraph shall expire twenty (20) years after the date on which this Declaration was first filed for record in the Office of the County Recorder of Salt Lake County, Utah.

**ARTICLE VII**  
**LAND USE RESTRICTIONS AND OBLIGATIONS**

**Section 7.1. General Restrictions and Requirements.**

(a) No improvement, excavation, fill or other work (including the installation of any wall or fence) which in any way alters any Unit from its natural or improved state existing on the date such Unit is first conveyed by Declarant to a purchaser shall be made or done except upon strict compliance with the provisions of this Article VII and the provisions of Article VIII.

(b) Units shall be used only for single-family residential purposes, and no more than one Dwelling shall be constructed on any Unit. The facilities and improvements constituting part of the Town Home Common Area shall be used only for the purposes and uses for which they are designed. Town Home Common Area shall be used only for natural recreational uses which do not injure or scar these areas or the vegetation thereof, increase the cost of maintenance thereof or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of their Units and Dwellings or the Collective Town Home Common Area.

(c) Businesses, professions or trades may be operated or maintained in a Unit subject to the prior written approval of the Board, which approval shall not be unreasonably withheld, subject to the following limitations: (i) any such business, profession or trade may not require heavy equipment or create a nuisance within the Project, (ii) may not noticeably increase the traffic flow to the project, (iii) may not be observable from outside the Unit, and (iv) may only be carried on following approval from Midvale City pursuant to all applicable state and city laws, rules and ordinances in effect at the time any such use is requested. Specifically, it is contemplated that certain businesses, professions or trade which rely heavily on the Internet and other similar type of technological advances may be operated or maintained within a Unit, subject to the foregoing limitations and all other limitations of this Declaration.

(d) No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Units and Dwellings or the Collective Town Home Common Area. Without limiting the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Unit and Dwelling thereon, shall be placed or used upon any Unit without the prior written approval of the Design Committee.

(e) No furniture, fixtures, appliances or other goods and chattels shall be stored in such a manner as to be visible from neighboring Units, Roadways or Town Home Common Area and Town Home Limited Common Area.

(f) Each Unit, and all improvements located thereon, shall be maintained by the Owner thereof in good condition and repair, and in such manner as not to create a fire hazard, all at the Owner's expense. The Owner shall have the financial responsibility for the maintenance and repair of the Units, including, but not limited to, the exteriors and roofs of

the Units. The Owner is required to frequently monitor and inspect the condition of his or her respective Dwelling Unit and its roof and exterior for maintenance and repair issues, and shall act promptly to remedy them at Owner's sole expense.

Should an Owner fail to maintain or repair his or her Unit in any respect as required by this Declaration after thirty (30) days written notice of the needed maintenance or repair from the Association to the Owner, and at the Association's reasonable discretion, the Association may fix or repair the problem through its own funds pursuant to an Assessment which shall be levied and collected against the relevant Owner's Dwelling Unit and the Owner(s) respectively as set forth within this Declaration. With respect to the maintenance and/or repairs which involve or impact more than one contiguous Unit on a Pad, the impacted Owners shall be responsible for and shall share the expense of the maintenance or repair in equal proportions. Should the Owners be unable to agree on the need for the maintenance or the repair, and/or its attendant cost, the Association Board shall have the authority to rule upon said dispute, and the decision of the Board shall be deemed to be final and binding absent a clearly erroneous decision.

The Association shall not incur liability in any respect by failing to provide any notice to any Owner of any needed repair or maintenance issue or obligation. Accordingly, and by way of example, an Owner or subsequent Owner may not bring any claim or demand against the Association for any alleged failure to enforce this provision specifically and/or this Declaration generally alleging that the maintenance or repair should have or could have been performed prior to said Owner's ownership of the Unit. All failed and/or breached obligations, duties and requirements under this Declaration shall inure to any and all subsequent owners. All owners, therefore, shall be jointly and severally liable to the Association.

(g) All garbage, rubbish, and trash shall be kept in covered containers. In no event shall such containers be maintained so as to be visible for neighboring Units, roadways, Town Home Common Area, or Town Home Limited Common Area. Placement of a garbage container on the street for pickup for 24 hours shall not violate this provision. The storage, collection and disposal of garbage, rubbish and trash shall be in strict compliance with applicable laws and the rules and regulations of the Board.

(h) No Unit shall be resubdivided.

(i) All improvements shall be constructed in accordance with applicable building line and setback provisions of zoning ordinances.

(j) All structures constructed on any Unit shall be constructed with new materials unless otherwise permitted by the Design Committee; and no used structures shall be relocated or placed on any Unit.

(k) No structure or improvement having a height of more than two (2) stories shall be constructed on any Unit; provided, however, that the height of a structure or improvement may exceed two (2) stories if permitted by law and if the Design Committee determines that the proposed height is compatible with the physical site involved and adjoining properties.

(l) Dwellings on all Units shall have a minimum of a two (2) car attached garage.

(m) Roof and materials shall be architectural grade asphalt shingles as approved by the Design Committee or other high quality roofing materials. All replacement of shingles shall be made by the Association at the expense of the Association so as to maintain uniformity throughout the project.

(n) Once a Residential Dwelling is constructed, no Owner shall change or alter the exterior covering of the Dwelling unless prior written approval is obtained from the Design Committee.

(o) No exterior lighting of any sort shall be installed or maintained on a Unit if the light source shines directly into a neighboring residence.

(p) No Dwelling shall be occupied until the same is substantially completed in accordance with the plans of the Dwelling type.

(q) No Owner of any Unit, except Declarant, shall build or permit the building thereon of any structure that is to be used as a model or exhibit unless a permit to do so is first granted by the Design Committee.

(r) No improvement which suffers partial or total destruction shall be allowed to remain on any Unit in such a state for more than three (3) months after the date of such destruction.

(s) No outside toilet, other than self-contained portable toilet units used during construction, shall be placed or constructed on any Unit or the Town Home Common Areas or Town Home Limited Common Areas. All plumbing fixtures, dishwashers, garbage disposals, toilets and sewage disposal systems shall be connected to a sewage system.

(t) No fuel tanks or similar storage facilities shall be constructed or used on any Unit or in or on the Collective Town Home Common Area.

(u) No exterior antenna or satellite dish of any sort shall be installed or maintained on any Unit except of a height, size and type approved by the Design Committee. No activity shall be conducted within the Town Home Property which interferes with television or radio reception.

No Outside clotheslines and other outside clothes drying or airing facilities shall be maintained on any Unit.

(v) No drilling, refining, quarrying or mining operations of any kind shall be permitted upon any Unit or the Collective Town Home Common Area, and no derrick, structure, pump or equipment designed for use in any such activity shall be erected, maintained or permitted on any Unit or the Collective Town Home Common Area. There shall be no water well developed on any Unit by the Owner thereof unless (i) a permit is first obtained from the Board, (ii) the Board first approves the location and facilities used in connection with such well, and (iii) a permit is obtained by all appropriate governmental authorities.

(w) There shall be no blasting or discharge of explosives upon any Unit or the Collective Town Home Common Area except as permitted by the Board; provided that this provision shall in no way limit or restrict Declarant in its activities in connection with and during the development, construction and sale of Units; and provided further that the Owner as first obtained the approval of all appropriate governmental authorities.

- (x) No signs whatsoever shall be erected or maintained upon any Unit, except:
- (1) Such signs as may be required by legal proceedings,
  - (2) Such signs as Declarant may erect or maintain on a Unit prior to sale and conveyance,
  - (3) One "For Sale" or "For Rent" sign having a maximum face area of fifteen (15) square feet and referring only to the premises on which it is situated.

(y) Except to the extent used by Declarant in connection with and during the development and sale of Units, no mobile home or similar facility shall be placed upon any Unit, the Collective Town Home Common Area, or adjoining public streets except for temporary storage in strict accordance with the rules and regulations of the Board. No stripped down, wrecked or junk motor vehicles shall be kept, parked, stored or maintained on any Unit or collective Town Home Common Area. No large commercial vehicle, motor home, camping trailer, snowmobile trailer, or the like, shall be parked on any Unit or Collective Town Home Common Area except as prior approved by the Board.

(z) Maintenance of any animals on any Unit shall be subject to the following restrictions and limitations:

- (1) No livestock of any kind, including, but not limited to, pigs, cows, goats, sheep, horses, etc. may be kept or maintained on any Unit.
- (2) No dangerous or nuisance animals, as defined by the Board, may be maintained or kept on any Unit.

(3) The area of any Unit occupied by an animal shall be properly maintained so as not to create any noxious or offensive odors or conditions which is or may become a nuisance or may cause disturbance or annoyance to other Owners in the Project.

(4) No animals shall be permitted on the Collective Town Home Common Area except when accompanied by and under the control of the persons to whom they belong. The Owner must immediately clean up after their pet(s)/animal(s) in the Town Home Common Area and Town Home Limited Common Area.

(5) The use and control of any animals shall be subject to further control by rules and regulations promulgated by the Board.

(aa) Subject to further control by rules and regulations promulgated by the Board, only a reasonable number of generally recognized house pets shall be kept on any Unit. House pets shall be permitted on the Collective Town Home Common Area when accompanied by and under the control of the person to whom they belong. No animals of any kind shall be raised for commercial purposes unless prior written approval is obtained from the Board.

(bb) There shall be no exterior fires, except fires started and controlled by the Association incidental to the maintenance and preservation of any portion of the Town Home Property and barbecue and incinerator fires contained within facilities or receptacles designed for such purposes. No Owner shall cause or permit any condition which creates a fire hazard, creates a nuisance, or is in violation of any fire prevention regulations.

(cc) There shall be no camping upon any Unit or Collective Town Home Common Area except as permitted by the Board by written license.

(dd) No Owner or guest shall park any vehicle or cause any obstruction in front of a driveway.

**Section 7.2. Exemption of Declarant.** Notwithstanding the provisions of Section 7.1, the Declarant shall have the right to use any Unit or Dwelling owned by it, and any part of the Collective Town Home Common Area reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional or other activities designed to accomplish or facilitate improvement of the Town Home Property, the Town Home Common Area and Town Home Limited Common Area or improvement, construction and sale of all Units owned by Declarant.

**Section 7.3. Enforcement of Land Use Restrictions.** The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

- (a) Declarant, so long as it has any interest in any of the Town Home Property or Units;
- (b) Any Owner;
- (c) The Association; or
- (d) The City of Midvale.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

**Section 7.4. Conditional Notes on Plat.** Neither the Association nor any Owner of a Unit shall have the authority to waive or alter the conditions or requirements set out as notes on the Plat.

#### ARTICLE VIII ARCHITECTURAL CONTROL

**Section 8.1. Organization of the Design Committee.** There shall be a Design Committee consisting of the Declarant until the termination of the Declarant's Class B Membership, at which time it will consist of not fewer than three (3) members, at least one of which shall be an Owner upon and after the termination of the Declarant's Class B Membership, unless there is no Owner willing to serve on the Committee. Declarant shall have the right to appoint, remove and increase the number of members of the Design Committee; provided that such right shall vest in the Board upon the conveyance of the last Unit in the Community to an Owner. Declarant may voluntarily relinquish control of the Design Committee to the Board at any time. Whenever the Design Committee consists of more than three (3) members, it may designate subcommittees, each consisting of at least three (3) members. Unless authorized by the Board, the members of the Design Committee shall not receive any compensation, but all members shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of any Design Committee function.

**Section 8.2. Actions Requiring Approval.** No fence, wall, Dwelling, accessory or addition to a Dwelling, or landscaping or other improvement of a Unit, or repair or maintenance of the exterior of a Unit or Unit's Roof shall be constructed or performed, nor shall any alteration of any structure on any Unit, including a change in exterior color, be made, unless complete plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall first be submitted to and approved by the Design Committee.

**Section 8.3. Standard of Design Review.** Before granting any approval of plans and specifications, the Design Committee shall determine to its reasonable satisfaction that such plans and specifications (a) conform to all architectural standards contained in this Declaration and all further architectural standards promulgated from time to time by the Board and (b) provide for a

structure, alteration, landscaping or other improvements in harmony as to external design and location with surrounding structures and topography.

**Section 8.4. Design Committee Rules and Architectural Standards.** The Board may, upon recommendation from the Design Committee, adopt and file as a matter of public record reasonable rules related to the efficient review of plans and specifications including requirements as to the number of sets of plans and specifications to be submitted, the fixing of a review or variance request fee not exceeding Fifty Dollars (\$50.00) per review or variance request, the details to be shown on plans and specifications, and design guidelines consistent with this Declaration and covering such matters as setbacks, height limitations, restrictions on minimum or maximum size and quality of structures.

**Section 8.5. Approval Procedure.** The Design Committee and any subcommittees thereof shall meet from time to time as necessary to perform the duties of the Design Committee. The vote or written consent of a majority of the Design Committee or any authorized subcommittee shall constitute the act of the Design Committee. Any plans and specifications submitted to the Design Committee shall be approved or disapproved within thirty (30) days after receipt by the Design Committee. If the Design Committee fails to take action within such period, the plans and specifications shall be deemed to be rejected. However, in the case of the Design Committee's failure to act within thirty (30) days as set forth above, the Owner shall have 10 days thereafter in which to submit a written request to the Design Committee for explanation of the failure to act upon the plans or specifications originally submitted. Should the Design Committee reject or fail to respond to this request in writing within ten (10) days thereafter, the plans and specifications originally submitted and which the Design Committee originally failed to act upon, shall be deemed approved.

**Section 8.6. Variance Procedure.** If plans and specifications submitted to the Design Committee are disapproved or rejected for any reason, including because such plans and specifications are not in conformity with applicable architectural standards, the party or parties making such submission may submit a request for variance to the Design Committee, which shall make a written recommendation of approval or disapproval of the requested variance to the Board. The Board shall approve or disapprove the request for variance in writing. If the Board fails to approve or disapprove a request for variance within sixty (60) days after such request is submitted to the Design Committee, such request shall be deemed to be denied.

**Section 8.7. Non-waiver.** The approval by the Design Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Design Committee to disapprove any similar plans and specifications.

**Section 8.8. Completion of Construction.** Once begun, any improvements, construction, landscaping or alterations approved by the Design Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Design Committee.



**Section 8.9. Exemption of Declarant.** The provisions of this Article shall not apply to any improvement, construction, landscaping or alteration made or performed by Declarant on any Unit or portions of the Town Home Common Areas or Town Home Limited Common Areas at any time during the twenty-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

**Section 8.10. Estoppel Certificate.** Within thirty (30) days after written demand therefor is delivered to the Design Committee by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Board, the Design Committee shall issue an estoppel certificate in recordable form executed by any two of its members, certifying with respect to any Unit of such Owner that as of the date thereof either (a) all improvements and other work made or done upon or within such Unit by the Owner, or otherwise, comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also (i) identify the nonconforming improvements or work, and (ii) set forth the nature of such noncompliance. Any mortgagee or purchaser from the Owner shall be entitled to rely on such certificate with respect to the matters therein set forth.

**Section 8.11. Disclaimer of Liability.** neither the Design Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Town Home Property, or (d) any engineering or other defect in approved plans and specifications.

#### ARTICLE IX INSURANCE

The matter of insurance and its applicability is largely governed by state statutory law. To the extent anything herein is inconsistent with state law duly applicable to this Declaration, state law shall control.

**Section 9.1. Liability Insurance.** The Board shall procure and maintain from a company or companies holding a rating of "B+" or better from Best's Insurance Reports a policy or policies (herein called "the Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Collective Town Home Common Area or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the County of Salt Lake nor less than \$1,000,000.00 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the

Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled by the insurer unless it gives at least thirty (30) days' prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

**Section 9.2. Association Casualty Insurance.** The Board shall also procure and at all times maintain in full force and effect a policy or policies of fire and casualty insurance, with extended coverage endorsement, insuring all physical structures within the Town Home Property, the Town Home Limited Common area and the Dwelling Units and their garages located on such Owner's Unit, and any improvements and betterments installed by an Owner subject to the restrictions of this Declaration, in an amount equal to its full insurable replacement cost. This insurance shall be known as the "Primary Insurance." The Association shall maintain an amount in reserve equal to the deductible of the Primary Insurance or \$10,000.00, whichever is less. When multiple Units are damaged in the same loss, the Association's Primary Insurance deductible shall be apportioned according to Unit damage percentages.

**Section 9.3. Owner Casualty Insurance or Secondary Insurance.** No later than upon conveyance of a Unit to an Owner shall each such Owner purchase and maintain property or building insurance in an amount equal to the deductible amount of the Primary Insurance such that the Secondary Insurance shall pay the deductible of the Primary Insurance upon a claim against the same. If an Owner fails to pay his or her share of the deductible amount of the Association on the Primary Insurance within 30 days of substantial completion of the repairs to the Unit(s), the Association may levy an assessment against said Unit Owners(s) for that amount and may subsequently lien the Unit to enforce payment. The Association shall notify the Owner(s) of the deductible provisions of the Primary Insurance. If the Association determines that a claim is likely not to exceed the Primary Insurance Deductible, the Secondary Insurance of the Unit Owner shall be considered the primary insurance to the amount of deductible of the Primary Insurance policy, and the Association need not tender the claim to the Primary Insurance carrier.

**Section 9.4. Additional Insurance; Further General Requirements.** The Board may also procure insurance which shall insure the Town Home Common Areas and Town Home Limited Common Areas and the Association, the Board, the Managing Agent or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide: (a) a waiver of the insurer's rights of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants; (b) that it cannot be cancelled, suspended or invalidated, due to the conduct of any particular Owner or Owners; (c) that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or any directors, officer, agent, or employee of the Association without a prior written demand that the defect can be cured and (d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

**Section 9.5. Review of Insurance.** The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Unit and to the holder of any mortgage on any Unit who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

**Section 9.6. Dwelling Contents Not Insured by Association.** The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Dwelling contents or acts and events occurring within a Dwelling. In connection therewith, Each Owner shall purchase and maintain adequate liability and property insurance on his or her Unit, personal property and contents; provided, however, no Owner shall be entitled to exercise his or her right to maintain insurance coverage in such a way as to decrease the Amount which the Association, on behalf of all the Owners and their Mortgagees, may realize under any insurance policy that the Association may have in force on the Town Home Property at any particular time.

**Section 9.7. Primary Coverage.** The insurance coverage of an Owner shall, in the event the Association also has insurance covering the loss and the Owner's insurance covers it beyond the deductible set forth above, shall be primary and the insurance of the Association shall be secondary.

## ARTICLE X CONDEMNATION

**Section 10.1. Condemnation.** If at any time or times the Town Home Common Areas or Town Home Limited Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Board and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Town Home Common Areas or Town Home Limited Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Board which are proceeds for the taking of any portion of the Town Home Common Areas or Town Home Limited Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Unit is eliminated, the Board shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Unit in the Association and the Town Home Common Areas and Town Home Limited Common Areas to such Owner and any first mortgagee of such Unit, as their interests shall appear, after deducting the proportionate share of said Unit in the cost of debris removal.

## ARTICLE XI RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first mortgagees shall be in effect:

**Section 11.1.** Preservation of Regulatory Structure and Insurance. Unless the Owners of at least seventy-five percent (75%) of the Units (not including Units owned by Declarant) and such Owners' first mortgagees, if any, shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and planting on the Town Home Property.

(b) to fail to maintain insurance as required by Article IX. This Section 11.1 may be amended as provided in Section 13.2 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

**Section 11.2.** Preservation of the Collective Town Home Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) all first mortgagees of Units and (2) the Owners of at least seventy-five percent (75%) of the Units (not including Units owned by Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the Collective Town Home Common Area, except to grant easements for utilities and similar or related purposes, as reserved in Section 6.5 of Article XI hereof; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Unit or the Owner thereof.

This Section 11.2 may be amended as provided in Section 13.2 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

**Section 11.3.** Written Consent Deemed Approved. If an Owner or a mortgagee fails to approve or disapprove a request made pursuant to this Article XI, or any other Article in this Declaration, within sixty (60) days after such request is mailed, by certified mail, return receipt requested, the request shall be deemed to be approved from such Owner or mortgagee.

**Section 11.4.** Notice of Matters Affecting Security. The Board shall give written notice to any first mortgagee of a Unit requesting such notice whenever:

(a) there is any default by the Owner of the Unit subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within sixty (60) days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds \$10,000.00; or

(c) there is any condemnation or taking by eminent domain of the Unit subject to the first mortgage or of the Common Areas; or

(d) any of the following matters come up for consideration or effectuation by the Association;

(1) abandonment or termination of the Planned Development established by this Declaration;

(2) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(3) any decision to terminate professional management of the Town Home\_Common Area or Town Home Limited Common Areas and assume self-management by the Owners.

**Section 11.5.** Notice of Meetings. The Board shall give to any first mortgagee of a Unit requesting the same, notice of all meetings of the Association; and such first mortgagees shall have the right to designate in writing a representative to attend all such meetings.

**Section 11.6.** Right to Examine Association Records. Any first mortgagee shall have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Unit securing the mortgage; provided, that the foregoing shall not be deemed to impose upon the Association any obligation to cause its financial statements to be audited.

**Section 11.7.** Right to Pay Taxes and Charges. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Collective Town Home Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Collective Town Home Common Area; and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Declarant, for the Association as owner of the Collective Town Home Common Area, hereby covenants and the Association by acceptance of the conveyance of the Collective Town Home\_Common Area, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

**Section 11.8.** Exemption from Any First Right of Refusal. Any first mortgagee who obtains title to the Unit subject to the first mortgage pursuant to the remedies provided in the first mortgage, or by foreclosure of the first mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale shall be exempt from any "right of first refusal" which would otherwise affect the Unit.

## ARTICLE XII PARTY WALLS

**Section 12.1.** General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwellings upon the Town Home Property and placed on the dividing line between two Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 12.2.** Repair and Maintenance. Each Dwelling shall share one or two party wall(s), a common roof, a common exterior back wall, and a common exterior front wall, with adjacent Dwellings. The Owners acknowledge that certain repairs or maintenance to the roof or exterior walls of the Dwellings may become necessary, which repairs or maintenance cannot be performed on one Dwelling only, but may necessarily involve the other attached Dwellings. All repairs to the roof, party walls and exterior walls of all Dwellings will be made by the Owner(s) consistent with the obligations, rights and procedure outlined in Article VII, Section 7.1(f).

## ARTICLE XIII MISCELLANEOUS

**Section 13.1.** Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the managing Agent or the President of the Association. Any notice required or permitted to be given to the Design Committee may be given by delivering or mailing the same to the Managing Agent or any member of the Design Committee.

**Section 13.2.** Amendment. Except as provided in Section 5.7 and Article XI, this Declaration may be amended by:

- (a) the affirmative vote of a two-thirds majority vote of the Owners, and
- (b) the written consent of Declarant, if such amendment is adopted at a time when Declarant holds Class B membership in the Association, and

(c) the filing of an instrument for record in the office of the County recorder of Salt Lake County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of a majority of the Owners, and, if required, has the written consent of Declarant.

**Section 13.3.** Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the Owners, whether present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 13.3:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence any change in ownership of a Unit which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would increase the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Owners whose memberships are appurtenant to the same Unit are secured, the consent of none of such Owners shall be effective.

**Section 13.4.** Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Town Home Property may be assigned.

**Section 13.5.** Interpretation. 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 herein construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

**Section 13.6.** 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 all inure to the benefit of Declarant, the Owners, all parties who hereafter

acquire any interest in a Unit, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit or Dwelling shall comply with, and all interests in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

**Section 13.7.** Duration. The covenants and restrictions of this Declaration shall remain in effect until twenty (20) years from the date this Declaration was first filed in the office of the County Recorder of Salt Lake County, Utah, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument filed in the office of the County Recorder, executed by any two (2) officers of the Association, certifying that the Owners of at least seventy-five percent (75%) of the Units and their first mortgagees, if any, voted in favor of such termination. If any of the privileges, covenants, or rights created by this Declaration would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then the provision herein creating such privilege, covenant or right shall, in any event, terminate upon the expiration of twenty-one (21) years after the death of the last survivor of the now living lawful descendants of Barak Obama, the current President of the United States at the time this Declaration was recorded.

**Section 13.8.** Enforcement. In the event a Dwelling Owner or occupant fails to maintain a Dwelling or fails to cause such Dwelling to be maintained, or fails to observe and perform all of the provisions of this Declaration, the applicable rules and regulations, or any other agreement, document, or instrument affecting the property administered by the Association in the manner required, the Association and the city of Midvale shall have the right, but not the affirmative obligation, to proceed in a court of appropriate jurisdiction to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, and to charge to Dwelling Owner for the sums necessary to do whatever work is required to put the Dwelling Owner or the Dwelling in compliance.

**Section 13.9.** Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.



"Declarant"

Destination Homes at Highland Gardens, LLC, a  
Utah limited liability company

By: *David S. Bailey*  
Its: Manager

STATE OF UTAH            )  
                                      : SS  
COUNTY OF DAVIS        )

On the 3 day ~~October, 2011~~ <sup>January 2012</sup>, personally appeared before me David S. Bailey who being by me duly sworn did say that he is manager of Destination Homes at Highland Gardens, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said limited liability company acknowledged to me that they executed the same.



*Tracy Liston Palmer*  
NOTARY PUBLIC

**EXHIBIT "A"**

**TOWN HOME PROPERTY**

The following real property located in Salt Lake County, State of Utah, to-wit:

**HIGHLAND GARDENS**

**BOUNDARY DESCRIPTION**

**SUBJECT TO** the covenants, conditions, restrictions, easements, charges and liens provided for in said Declaration of Covenants, Conditions and Restrictions.

**EXHIBIT "B"**

**TOWN HOME COMMON AREA**

The Town Home Common Area within Highland Gardens Town Home Association, P.U.D. shall include the open areas between the Dwellings and the roadways as shown and described on the Plat.

**TOWN HOME LIMITED COMMON AREA**

The Town Home Limited Common Area within Highland Gardens Town Home Association, P.U.D. shall include the area immediately to the rear of a Dwelling and immediately to the front of a Dwelling, as shown and described on the Plat, including driveways, patios, porches, courts, etc.