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ADAM GARDINER
RECORDER, SALT LAKE COUNTY, UTAH
SMITH KNOWLES P.C.
2225 WASHINGTON BLVD
SUITE 200
OGDEN UT 84401
BY: BAP, DEPUTY - WI 35 P.

After Recording Return to:
Smith Knowles, P.C.
2225 Washington Blvd., Suite 200
Ogden, Utah 84401

**DECLARATION OF COVENANTS,
CONDITIONS & RESTRICTIONS
FOR EVANS SQUARE
CONDOMINIUMS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EVANS SQUARE CONDOMINIUMS (this "Declaration") is made and executed on this 21 day of July, 2018, by LF EVANS SQUARE, LLC, a Utah limited liability company (hereinafter "Declarant").

RECITALS:

(A) This Declaration will take effect on the date recorded at the office of the Salt Lake County Recorder's Office (the "Effective Date").

(B) Declarant is the owner of certain real property located in Salt Lake County, Utah and more particularly described as follows (the "Property"):

BEGINNING AT THE SOUTHWEST CORNER OF LOT 5, BLOCK 20 OF THE DRAPERVILLE TOWNSITE, SAID POINT BEING SOUTH 89°45'27" EAST, ALONG THE SECTION LINE, 935.02 FEET AND NORTH 00°14'33" EAST 1966.34 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING ON THE EAST RIGHT OF WAY LINE OF 900 EAST STREET, AND RUNNING THENCE NORTH 00°32'39" EAST, ALONG THE WEST LINE OF LOT 5, BLOCK 20 OF THE DRAPERVILLE TOWNSITE AND SAID EAST RIGHT OF WAY LINE, 148.50 FEET TO THE NORTH LINE OF THE SOUTH HALF OF SAID LOT 5; THENCE SOUTH 89°27'21" EAST, ALONG SAID NORTH LINE AND THE NORTH LINE OF THE SOUTH HALF OF LOT 6 OF SAID BLOCK 20, 258.75 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE DRAPER LIGHT RAIL TRAX (LRT) TRANSIT PROJECT AS DEFINED IN THE RECORD OF SURVEY BY REDCON INC RECORDED AS S2014-10-0507 IN THE OFFICIAL RECORDS OF THE SALT LAKE COUNTY SURVEYORS OFFICE; THENCE SOUTH 34°11'02" EAST, ALONG SAID WESTERLY RIGHT OF WAY LINE, 67.15 FEET TO THE EAST LINE OF SAID LOT 6, BLOCK 20; THENCE SOUTH 00°32'39" WEST, ALONG SAID EAST LINE, 93.31 FEET TO THE SOUTHEAST CORNER OF SAID LOT 6; THENCE

NORTH 89°27'21" WEST, ALONG THE SOUTH LINE OF SAID LOTS 5 AND 6, 297.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 5 AND THE POINT OF BEGINNING.

CONTAINS 43,049 SF OR 0.988 ACRES MORE OR LESS

(C) Declarant desires to subject the Property to the terms of this Declaration. Declarant intends to develop a mixed-use commercial and residential subdivision on the Property pursuant to the Condominium Ownership Act, Utah Code Sections 57-8-1, *et. seq.* Declarant will develop and convey all of the Units within the Subdivision subject to a general plan of development, and subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Units within the Subdivision. Common Areas and Limited Common Areas are those areas that are depicted in the recorded Plat(s), as amended, and as described in this Declaration. The Subdivision does not constitute a cooperative.

(D) Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas and facilities and otherwise administer and enforce the provisions of this Declaration. For such purposes, contemporaneously with the recording of this Declaration, Declarant will register with the Utah Department of Commerce Evans Square Condominium Association, Inc. (the "Association").

(E) The Association is governed by the terms of this Declaration, the Articles of Incorporation for Evans Square Condominium Association, Inc. ("Articles"), and the Bylaws for Evans Square Condominium Association, Inc. ("Bylaws"), which Bylaws are attached hereto as **Exhibit "A"** and shall be recorded in the Salt Lake County Recorder's Office contemporaneously with the recording of this Declaration.

(F) Declarant declares that the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with each Unit located on the Property, including any additions thereto, and shall be binding upon all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Property and any interest therein, and may be enforced by the Declarant and the Association.

(G) Notwithstanding the foregoing, no provision of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's

reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Unit owned by the Declarant as a model, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; and (4) assignment of Declarant's rights under this Declaration in whole or part.

(H) These Recitals are made a part of this Declaration.

COVENANTS, CONDITIONS AND RESTRICTIONS

ARTICLE I DEFINITIONS

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

(A) "Act" means the Condominium Ownership Act, Utah Code Ann. Sections 57-8-1 *et. seq.*

(B) "Allocated Interest" shall mean the undivided interest of an Owner (expressed as a percentage in **Exhibit "B"** to this Declaration) in the Common Areas, which is also utilized for purposes of calculating Assessments and voting rights in the Association.

(C) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a regular assessment, special assessment, individual assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

(D) "Articles" shall mean the Articles of the Association, as amended from time to time.

(E) "Association" shall mean EVANS SQUARE CONDOMINIUM ASSOCIATION, INC., and as the context requires, the officers or directors of that Association.

(F) "Board" or "Board of Directors" shall mean the duly elected and acting Board of Directors of EVANS SQUARE CONDOMINIUM ASSOCIATION, INC. (which shall also be synonymous with "Management Committee" as utilized in the Act.)

(G) "Bylaws" shall mean the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as **Exhibit "A."**

(H) "City" shall mean Draper City, Utah and its appropriate departments, officials and

boards.

(I) "County" shall mean Salt Lake County, Utah and its appropriate departments, officials and boards.

(J) "Common Areas" shall mean and refer to all property in the Project owned in common by the Owners including, but not limited to, the following items:

- i) All Common Areas and facilities designated as such in the Plat or in this Declaration;
- ii) All property included within the Project that is not part of a Unit or Limited Common Area;
- iii) All foundations, columns, girders, beams, supports, main walls, exterior walls, roofs, subfloors, halls, corridors, lobbies, stairs, and fire escapes;
- iv) 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 Unit Owners;
- v) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to two or more Units;
- vi) The Project's outdoor facilities, grounds, courtyards, benches, private roads, lanes, parking amenities, sidewalks, entry and monuments;
- vii) 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 the Owners; and
- viii) Provided, however, that certain utility installations such as telephone, electricity, gas, water, and sewer may be dedicated to the City or County and, if so, this definition shall not be construed to exclude the City/ County from the ownership, maintenance, and control of such utilities.

(K) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) providing facilities, services and other benefits to Owners as set forth in this Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments, charges, fines, penalties and liens imposed pursuant hereto; (E) operating the Association; and (F) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act.

(L) "Declarant" shall mean and refer to LF Evans Square, LLC a Utah limited liability company, and its successors and assigns.

(M) "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Evans Square Condominium, together with any subsequent amendments or additions.

(N) "Governing Documents" shall mean this Declaration, Bylaws, Articles, Plat, Rules, and any other documents or agreements binding upon an Owner.

(O) "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, Units, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(P) "Limited Common Areas" shall mean all property designated on the recorded Plat or as described in this Declaration as Limited Common Area, being intended ultimately to be owned by the Association but for the exclusive use and enjoyment of one or more appurtenant Units but fewer than all of the Units, such as the patio/deck areas.

(Q) "Manager" shall mean any entity or person engaged by the Board of Directors to manage the Project.

(R) "Member" shall mean and refer to every person who holds membership in the Association, including an Owner and the Declarant, as set forth herein.

(S) "Owner" shall mean the person or persons having title to any Unit. Owner shall mean the person holding fee simple title, including the Declarant, and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of any obligations, including the trustee and/or beneficiary under a deed of trust or mortgagee under a mortgage.

(T) "Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

(U) "Plat(s)" shall mean an official and recorded plat of Evans Square Condominiums, including all subsequent phases when recorded, as approved by the City and recorded in the office of the Salt Lake County Recorder, as it may be amended from time to time.

(V) "Property" shall have the meaning set forth in the recitals.

(W) "Rules" mean any instrument adopted by the Board for the regulation and management of the Association as provided in the Governing Documents.

(X) "Subdivision" or "Project" shall mean all phases of Evans Square Condominiums and all Units, Common Areas, Limited Common Area, and other property within the

Subdivision, as shown on the Plat(s) and any future Plat(s) covering the Property.

(Y) "Subdivision Improvements" shall mean all improvements to be installed outside the boundaries of Units or within easements as identified on the Plats that are necessary to provide public road access and/or private road access and utility service to the Units, and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof.

(Z) "Unit" shall mean any numbered Unit shown on any official and recorded Plat(s) whether or not it contains an Improvement and shall include all mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning apparatus, furnaces, stoves, fixtures and the like, shall be considered part of the Unit, as shall all floors, ceilings, windows, window frames, window wells, skylights, exterior glass, doors, garages, garage doors, and similar components. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any other property of any kind, including fixtures and appliances within any Unit, which are within the Unit but are removable without jeopardizing the soundness, safety or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit. In addition, all decorated interiors, all surfaces of interior structural walls, floors and ceilings, trim, wallpaper, paint, flooring, carpeting and tile, outlets, and any other material constituting any part of the finished surfaces. The Unit shall extend to the center of the walls shared with or abutting another Unit, which center shall form the boundary of the Units sharing that wall.

ARTICLE II EASEMENTS

2.1 Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the 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 Common Area except for the necessary parking, access, and utility easements for use in common with others.

2.2 Easement Concerning Limited Common Area. The Association shall have a non-exclusive drainage and public utility easement and an easement for maintenance in and to the 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 Limited Common Area appurtenant to their Unit.

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

(a) The right of the Association to govern by Rules the use of the 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 Common Area;

(b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.

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

2.4 Reservation of Access and Utility Easements. Declarant hereby reserves an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the 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 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 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 Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

2.5 Easements for Encroachments. If any part of the Common Area or Limited Common Area now existing upon any Unit or hereinafter constructed by Association encroaches upon a Unit, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any Common Area or Limited Common Area improvement 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 a Unit or upon any portion of the Common Area or 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.

2.6 Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the 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 Units, (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Units, or other property in the Project, (c) improvement of the 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 (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

2.7 Income Generated from Service Providers. Declarant, as owner of the real property at the time it is annexed into the Subdivision through recordation of a plat, which includes the dedication of certain utility easements to the City or County, may negotiate terms with service providers that desire to install infrastructure to provide services to owners in the Subdivision. During the Declarant Control Period, any income gained from these negotiations with service providers by Declarant may be retained by the Declarant.

2.8 Easement in Favor of Association. The Units, Common Area and Limited Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

- (a) For inspection during reasonable hours of the Units, Common Area and Limited Common Area in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair and replacement of portions of the Common Area and Limited Common Area;
- (c) For correction of emergency conditions on one or more Units or on portions of the Common Area and Limited Common Area;
- (d) For the purpose of enabling the Association, the Architectural Control Committee or any other committees appointed by the Association to exercise and discharge during reasonable hours their respective rights, powers and duties;

(e) For inspection during reasonable hours of the Units, Common Area and Limited Common Area in order to verify that the Owners and occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

ARTICLE III
UNITS, COMMON AREAS & LIMITED COMMON AREAS

3.1 Units.

- (a) The Project consists of three (3) Buildings and fifteen (15) total Units.
- (b) All Units shall be capable of being independently owned, encumbered and conveyed. The Owner or Owners of each Unit shall be entitled to the exclusive possession and control of such Unit, subject to the rights of the Association set forth in the Governing Documents.

3.2 Use of Units. The main floor of each of these units is designated and zoned for commercial use only. No residents shall occupy the main floor, rent, lease, or otherwise cause or allow any individual(s) to occupy the main floor as living space.

3.3. Commercial Units. The Commercial Units shall not be used for conducting: medical laboratory; food processing; manufacturing activities; sales of pornographic literature, photographs or movies; card room; dance hall; pool hall; video arcade or other similar form of amusement center; musical school or studio; laundry, dry-cleaning, dyeing or rug cleaning plant; bar or tavern; liquor store; taxidermy shop; or retail pet shop or animal clinic.

- (a) Access to and the delivery or shipment of merchandise, supplies, and fixtures to and from the Commercial Units shall be accomplished in a manner that shall not unreasonably interfere with the security of the Residential Units.
- (b) The Owner of a Commercial Unit shall not allow or permit any continuing vibration ("Vibration") or any offensive or obnoxious and continuing noise ("Noise") or any offensive or obnoxious and continuing odor ("Odor") to emanate from the Commercial Unit into the residential Units, nor shall the Owner allow or permit any machine or other installation therein to constitute a nuisance or otherwise to unreasonably interfere with the safety or comfort of any of the Owners of other Units. Upon the failure of the Owner of a Commercial Unit to remedy Noise or Vibration, following notice, the Board may at its option either (1) cure such condition at the Owner's costs and expense, (2) issue fines; or (3) pursue any other available legal or equitable remedy.
- (c) The Owner of a Commercial Unit shall not use nor occupy the Unit nor do or permit anything to be done thereon in any manner which shall make it

impracticable for the Association to carry any insurance required or reasonably deemed to be necessary, or which will invalidate or unreasonably increase the cost thereof, or which will cause structural injury to the building, or which would constitute a public or private nuisance or which will violate any laws, regulations, ordinances or requirements of the federal, state or local governments or of any other governmental authorities having jurisdictions over the property.

(d) The Owner of a Commercial Unit shall bear the expenses relating to any changes in electrical, gas or water service necessitated by the use of the Unit.

3.4 Description of Units. The Units are described in Plat(s).

3.5 Separate Taxation of Units. Each Unit constitutes a separate parcel of real estate and will be separately assessed and taxed.

3.6 Modification to Units. Without prior, written approval from the Board, an Owner may not make any repairs, modifications or alterations to any part of the exterior of a Unit or building. Similarly, without prior, written approval from the Board, an owner may not conduct any interior remodels of the Unit that impact existing walls, structures or other items that may impact the integrity of the Unit, such as: walls, shared walls, shared roofing and similar structures. This provision is not intended to prevent an owner from decorating, painting, or conducting similar activities without the prior written permission of the Board. The Board may require that such modification or repairs be made in a particular manner and with qualified persons to maintain conformity within the Project.

(a) Without prior approval of the Board, none of the following shall occur at any time: (1) any use of the Common Aea for staging, storage, assembly, or construction, (2) any nuisance as established by law or by the Governing Documents, (3) any blocking of the Common Area by vehicles, materials, or persons, or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to remodeling.

(b) The Board shall have no authority to approve of any remodeling: (1) inconsistent with the Governing Documents (2) that modifies the exterior dimensions of any Unit from the original construction (unless any such modification is approved of as otherwise provided herein), or (3) that would cause unsafe conditions.

(c) All remodeling and other repairs and modifications to Units must be completed in compliance with all applicable building codes, laws, and the manufacturer's specifications for any materials, equipment, and fixtures.

(d) The Association may require indemnification agreements from an Owner with respect to any approved modification that impacts the roof of other shared components.

(e) The Declaration shall be exempt from this Article.

3.7 Ownership of Common Areas. The Common Areas shall be owned by the Owners of all of the Units as tenants in common. A percentage of undivided interest in the Common Areas shall attach to each Unit, as set forth in **Exhibit "B"**. Upon any conveyance or transfer of a Unit, the undivided interest in Common Areas attributable to such Unit shall automatically be conveyed or transferred with the Unit. No undivided interest in Common Areas may be transferred or conveyed separate or apart from the Unit to which the undivided interest is attributable. Each Owner shall have a license to use all of the Common Areas, subject to the terms and conditions of the Governing Documents.

3.8 Shares of Common Expenses. Except as otherwise set forth in this Declaration, all Common Expenses shall be allocated among all Units as set forth in **Exhibit "B"**.

3.9 Limited Common Areas. The Limited Common Areas are depicted on the recorded Plats, as well as described in attachments to this Declaration and shall include the patio/deck areas on the Units. Limited Common Area shall be used exclusively by the Owner of the Unit to which such Limited Common is appurtenant. The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit. The Owners shall be responsible to maintain, repair and replace the Limited Common Area.

ARTICLE IV

MAINTENANCE OF COMMON AREAS, LIMITED COMMON AREAS AND UNITS

4.1 Maintenance of Common Areas. Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain all Common Areas, including, without limitation, the Improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate, including the following:

- (a) Roofs, rain gutters, and down spouts;
- (b) Outside exterior surfaces of Units;
- (c) Private roadways and parking area;
- (d) Chimneys and chimney caps;
- (e) Foundations (excluding any concrete pad within a Unit or garage, or the concrete patio/deck area);
- (f) Structural components, including, but not limited to: exterior or bearing walls or walls that are common to two or more Units;

- (g) Infrastructure, pipes, water, and utility lines that are contained within the roadways in the Project and not the responsibility of the City or County;
- (h) General landscape and sprinkler maintenance, including the repair, maintenance and replacement of existing sprinkler systems and landscaping within the Project that have not been modified by an Owner;
- (i) Light Poles;
- (j) Community mailboxes, if any;
- (k) Walkways and sidewalks that serve more than one Unit;
- (l) Private utility lines/infrastructure that serves more than one Unit;
- (m) Landscaping. The Association shall maintain the landscaping within the Project.

4.2 Snow Removal. The Association shall make reasonable and prudent efforts to contract with a third party for the removal of snow from sidewalks, driveways and other relevant Common Areas within the Project. Owners shall be responsible for removing snow from patio areas, and other applicable areas on their Unit. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow will be delegated to a third party, who will utilize its discretion in the frequency of the snow removal and the amount of accumulation meriting removal. The Association shall not be responsible or liable for said third party's discretion and removal of snow.

4.3 Maintenance of Limited Common Areas. The Owners are responsible for maintenance, repair and replacement Limited Common Areas.

4.4 Owner's Responsibility for Maintenance of Units. Each Owner, at such Owner's sole cost and expense, shall maintain and/or replace such Owner's Unit and the Improvements constituting a part thereof, in good order and repair, including:

- (a) Unit;
- (b) Entryways, porches, and decks;
- (c) All interior and exterior doors, including frames, locks, hinges, door jams and garage doors;
- (d) Finished interior of the Unit, including: flooring, tiles, wallpaper, paint, carpet, wood, fireplaces, other material comprising finished interior floors, walls or ceilings;
- (e) Drywall, wallboard and similar materials within a Unit;
- (f) Skylights, windows, window sills, window frames, glass, screens, and patio doors;
- (g) Sewer and drainage pipes, wiring, power, water and other utility lines within their Unit;
- (h) Concrete pads within Unit(s) or garage(s);
- (i) Plumbing fixtures, fans, stoves, refrigerators, appliances, heaters, furnaces, fireplaces, vents, chimneys, HVAC systems, compressors, condensers, ducting, air conditioning, water spigots, lighting fixtures, pipes, and similar appliances,

- fixtures and pipes that exclusively serve an Owner's Unit(s);
- (j) Patio and deck flooring and structures within the Limited Common Area and Units;
 - (k) Any of the following located wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively: lighting fixtures (including lighting attached to exterior walls, but not including Association security lights), fans, plumbing fixtures (other than pipes located outside of a Unit and that do not exclusively serve that Unit), stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers, ducting, and forced air units). Intercoms, security systems, water spigots and bibs, vents, chimneys and fireplaces, and such other appliances, fixtures, and decorations as an Owner may install as permitted in this Declaration;
 - (l) The Owner shall be responsible for keeping the Unit and Improvements thereon in a clean and sanitary condition, free of pests and rodents, and uncluttered. Each Owner shall keep the interior of his Unit, including without limitation all interior walls, doors, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a good state of repair. The Board of Directors may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, or installed in any Unit, which may include a prohibition on leaving, installing or storing any items in such places.

ARTICLE V MEMBERSHIP

5.1 Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner cease to have an ownership interest in the Unit. Upon the transfer of an ownership interest in a Unit the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Unit is held. Notwithstanding the foregoing, the Declarant shall also be granted voting rights as a Class "B" Member, as defined below.

ARTICLE VI VOTING

6.1 The Association shall have two (2) classes of voting membership, Class "A" and Class "B", as follows:

- (a) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Class "A" membership shall be entitled to vote in accordance

with their Allocated Interest. In order to be eligible to vote, an Owner must be current on all Assessments and charges at least 30 days in advance of the meeting, ballot or vote.

(b) Class "B". The Class "B" Member shall be Declarant. In all matters requiring a vote, the Class "B" membership shall receive one hundred (100) votes for each recorded Unit owned by Declarant. The Class "B" membership shall also be entitled to appoint the members of the Board and Association during the Class "B" Control Period.

ARTICLE VII **CONTROL PERIOD**

7.1 The Class "B" Control Period runs until ninety (90) days after the first to occur of the following:

- (a) When the total number of votes for the Class B Member is less than the total number of votes for the Class A Members; or
- (b) When, at its discretion, the Class B Member so determines.

7.2 Notwithstanding anything to the contrary in this Declaration, Declarant may exercise its discretionary termination of control in whole or in part as to any portion of the Subdivision at its sole election and determination. In doing so as to a portion of the Subdivision, it does not waive any reversionary or remaining control as to all other portions of the Subdivision, the control of which is not expressly terminated by Declarant.

ARTICLE VIII **HOMEOWNER ASSOCIATION**

8.1 Organization. The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners within the Project, and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Unit, and is transferable only in conjunction with the transfer of the title to the Unit. The Association shall serve as the organizational body for all Owners.

8.2 Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Unit; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense (with the exception of water,

sewer, power and natural gas); (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law.

(a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.

(b) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Document, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Unit(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

(c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

8.3 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. The Association has the power to levy assessments against each Unit as necessary to carry out its functions. Assessments shall be levied against all Units in the Property, whether vacant or improved. 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 assessments described in these covenants, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable.

(a) 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 obligations 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 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 assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) 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 therefor.

(b) Special Assessment. 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 Common Areas.

(c) **Individual Assessment.** The Association may levy individual assessments on every Unit, Owner or occupant that shall cause any damage to the Project or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Unit(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.

(d) The Association may levy a reserve fund assessment, as set forth in this article.

(e) The Association may levy other assessments or fees, as authorized by the Governing Documents.

8.4 Budget. The Board is authorized and required to adopt a budget annually, which shall be presented to the Owners at a meeting of members.

(a) The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budget.

(b) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

(c) Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments.

8.5 Reserve Fund Analysis. Following the Class B Period, the Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

8.6 Reserve Fund Account Creation. The Board shall create a reserve fund account that is separate and distinct from the Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Board's discretion, to fund the reserve account.

8.7 Reinvestment Fee. The Board shall have power to levy a one-time reinvestment fee when a change in ownership of a Unit occurs in the amount of \$500.00.

8.8 Date of Commencement of Assessments. Assessments provided for herein shall commence as to each Unit on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide. Notwithstanding, Assessments for those Units owned by Declarant or its assigns, successors, subsidiaries, related construction entities, or other entities established by Declarant, or Declarant's members, for the purpose of constructing Units (collectively "Declarant Related Entities") shall not commence until the completed Unit is conveyed to an Owner that is not the Declarant or Declarant Related Entity.

8.9 Fines. Following notice as required by the Act, the Association shall have the power to assess a fine against an Owner (or their Unit) for a violation of the terms and conditions of the Governing Documents in an amount set by the Board.

8.10 Hearing Process. The Board shall have authority to create a reasonable hearing process, consistent with the Act, applicable when the Association takes an adverse action related to any particular Owner(s).

8.11 Association Rules. The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing: (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals in the Project; (e) collection policies and procedures; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents, as deemed necessary by the Board. The Rules may supplement, clarify and add detail to issues addressed in Governing Documents. However, the Rules may not contradict the Governing Documents.

(a) During the Class B Period, Declarant shall be exempt from the rule making procedure required by Utah Code § 57-8a- 217.

8.12 Statement of Account & Payoff Information. Upon a written request from an Owner that the Association provide the Owner with a statement of his/her account, the Association may charge a fee, not to exceed \$10.00, for providing such statements. In addition,

when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Unit Owner's sale of his/her Unit, the Association may charge a fee not to exceed \$50.

8.13 Availability of Documents. The Association shall make appropriate documents available to Owners (and their lenders, insurers and/or authorized agents) consistent with the Act and the Utah Revised Non-Profit Act. The Board may adopt a record retention policy to govern its record retention procedures.

8.14 Indemnity of Association Board and Officers. The Association will indemnify the officers, agents and Board of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under the Governing Documents.

8.15 Election, Notice of Election, Notice of Meeting and Special Meetings. Election procedures and notice of any meeting shall be conducted as set forth in the Articles of Incorporation and Bylaws of the Association.

8.16 Number of Board, Term of Office. The appointment, election and term of the Members of the Board are set forth in the Bylaws and Articles. Members of the Board of Directors may serve consecutive terms, and may also serve as officers of the Association.

8.17 Independent Accountant/Bookkeeper. The Association may retain the services of an independent accountant or bookkeeper to assist the Board of Directors and officers to maintain accurate financial records of the Association.

ARTICLE IX

NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE

9.1 Delinquent Assessment. Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

9.2 Due Date, Charges & Interest. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10th of each month. The Board may charge a late fee in an amount set by the Board, for each unpaid or late assessment. In addition to late fees, interest shall accrue on all unpaid balances, including prior, unpaid interest and attorney fees (resulting in compounding interest), late fees, and assessments at 18% per annum or 1.5% per month. The Board may also impose other reasonable charges imposed by a Manager related to collections.

9.3 Lien. Upon recording of a notice of lien on any Unit, there shall exist a perfected

lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Association.

9.4 Foreclosure. The Association shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Unit not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

9.5 Other Remedies. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Unit(s), and/or other obligees jointly and severally.

9.6 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Unit, the amount of any assessment that is more than sixty (60) days past due.

9.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Unit(s).

9.8 Appointment of Trustee. The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Burt R. Willie, Esq., a licensed member of the Utah State Bar, with power of sale, the Unit and all Improvements to the Unit for the purpose of securing payment of assessments under the terms of this Declaration.

ARTICLE X
SUBORDINATION OF LIEN TO INSTITUTIONAL
FIRST AND SECOND MORTGAGES

10.1 The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the

lien of any institutional first or second mortgage of record made in good faith and for value, recorded prior to a recorded notice of lien by the Association. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a prior, recorded institutional first or second mortgage shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer; 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 such Unit from lien rights for any assessments thereafter becoming due. Where the mortgagee holding an institutional first or second mortgage of record or other purchaser of a Unit obtains title pursuant to remedies under the mortgage, its successors and assigns shall not be liable for the share of the assessments by the Association chargeable to such Unit that became due prior to the acquisition of title to such Unit by such acquirer. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

ARTICLE XI **USE LIMITATIONS & RESTRICTIONS**

11.1 **Mixed Use.** The Units and Improvements within the Project are intended to be a mix of residential and business purposes, with the bottom or ground floor being utilized as commercial space, with the upper floors being utilized as residential space.

11.2 **Zoning Regulations.** The lawfully enacted zoning regulations of the City and/or County, and any building, fire, and health codes are in full force and effect in the Project. No Unit may be occupied in a manner that is in violation of any statute, law or ordinance.

11.3 **Licensed Contractor.** Unless the Board gives a written waiver of approval to an Owner, no Improvement may be constructed, remodeled or altered on any Unit except by a licensed contractor, duly qualified and licensed by the appropriate governmental authorities.

11.4 **Restriction on Signs.** Owner must receive prior written approval prior to the installation of any signage within the Project. Declarant and Declarant Related Entities are exempt from this requirement.

11.5 **Completion Required Before Occupancy.** No Unit may be occupied prior to its completion and the issuance of a certificate of occupancy by the City and/or County.

11.6 **No Re-Subdivision.** No Unit may be re-subdivided.

11.7 **Combination of Units.** No Unit may be combined with another Unit without the consent of the Board.

11.8 Construction. No Unit or structure shall be permitted to remain incomplete for a period in excess of two (2) years from the date of commencement of construction unless any delays are approved in writing by the Board. Declarant and Declarant Related Entities are exempt from this requirement.

11.9 Maintenance of Property. All Units, and the Improvements on them, shall be maintained in a clean, sanitary, attractive and marketable condition at all times. No Owner shall permit his Unit or the Improvements on it to fall into a state of disrepair.

11.10 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Unit or the Project, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Units. No Owner or occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

11.11 No Hazardous Activity. No activity may be conducted on any Unit that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners' insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than property supervised and contained).

11.12 No Unsightliness. No unsightliness is permitted on any Unit. This shall include, without limitation, the open storage of any building materials (except during construction of an Improvement); open storage or parking of construction equipment; open storage or parking of vehicles, trailers or other pieces of equipment that are unusable, in poor condition or unsightly; accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; and the storage or accumulation of any other material that is unsightly.

11.13 Garbage. All garbage, rubbish, and trash shall be kept in covered containers. The storage, collection and disposal of garbage, rubbish and trash shall be in strict compliance with applicable laws and the Rules of the Board.

11.14 Livestock, Poultry and Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Unit, except that dogs, cats or other household pets (maximum of two) may be kept provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's control. "Control" for the above purposes shall only mean on a leash or lead, within a vehicle, within the Unit of the Owner, or within confines on the premises of the Owner. Pet owners shall promptly remove and dispose of all excrement emitted by their pets. Fierce, dangerous or vicious animals or animals that cause a nuisance by barking or other offensive activity shall not be permitted. Failure to abide by these conditions shall result in fines as authorized by the Board.

11.15 Landscaping. The front, side yard and backyard of each Unit must be fully landscaped within one (1) year of receipt of a certificate of occupancy for all Units not owned by Declarant or Declarant Related Entities. The amount of landscaping completed by the Developer or the Owner may depend on the Unit Type. If landscaping is completed by the Owner, the Owner shall submit a landscaping plan to the Board and receive approval of said plan prior to commencement of any such landscaping. Prior written permission must be obtained by the Board to materially modify exterior landscaping on any Unit.

- (a) The Association shall perform the regular maintenance of the landscaping within the Project and on the Units. Notwithstanding, an Owner may be individually assessed for costs related to repair and/or replacement of landscaping on that Owner's Unit.

11.16 Fencing. No fencing may be installed by an Owner without prior written approval from the Board. Declarant and Declarant Related Entities are exempt from this requirement.

11.17 Vehicles & Parking. No vehicles are to be parked or stored in garages, driveways or elsewhere in the Project unless they are in running condition, properly licensed, regularly used and in compliance with City and/or County ordinances. The Association reserves the right to adopt Rules relating to the parking of vehicles within the Project including, without limitation: (1) the right to immediately remove or cause to be removed any vehicles that are improperly parked, (2) restrictions on the time period and duration that any guest or visitor parking may be utilized; (3) restrictions or bans on the type of vehicles allowed in the Project, and (4) the assessment of fines to Owners and occupants who violate such Rules.

11.18 Exterior Antennas and Satellite Dishes. An Owner is required to utilize existing cables, satellite dishes, antennas and related structures before installing any new hardware to the exterior of the Unit. Except for minimal length connecting to exterior equipment, no visible cables and/or wiring on the exterior of a Unit shall not be allowed. Prior, written approval from the Board as to the location of any new satellite dishes, antennas, cables and related hardware is required.

11.19 Firearms, Incendiary Devices and Graffiti. The use of firearms, incendiary devices, or 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, air-soft guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size. Notwithstanding, this provision is not intended to regulate the ownership of firearms, or the carrying of a firearm to and from an Owner's Unit, as otherwise authorized by Utah law.

11.20 Temporary Structures. No Owner or resident 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 of Directors.

11.21 Energy Conservation Equipment. Owners shall first submit a plan and receive prior written approval from the Board, as to the type, location, size and appearance of solar or green energy devices, prior to their installation. Declarant shall be exempt from this requirement.

11.22 Smoking Prohibited. In harmony with the Utah Indoor Clean Air Act, smoking is prohibited within the Project (including, but not limited to: Units, Common Areas and Limited Common Areas).

(a) Violation of Smoking Restriction. In the event an Owner or occupant violates the prohibition on smoking within the Project, the Board shall have authority to issue Fines. Any occupants repeated violations of the smoking restriction shall be grounds for, among other remedies available to the Association, eviction, and the Association shall be authorized to initiate and complete eviction and assess the costs and attorney fees incurred in said eviction to the Owner. In said event, the Association shall be entitled to: (a) an injunction ordering the tenant to vacate the premises, or such other relief as deemed appropriate by the court, including the issuance of a writ of restitution, (b) damages against the Unit owner in the amount of \$50 per day (up to the maximum allowed) for each day the tenant remains in the unit as the result of the Owner failing to promptly initiate eviction proceedings, and (c) recovery of its costs and attorney fees from the Owner, including the recording of a lien. The Board shall have all additional powers deemed necessary to enforce the provisions of this Article.

ARTICLE XII OWNERS' MAINTENANCE OBLIGATIONS

12.1 Duty to Maintain. It is the obligation of each Owner to maintain his Unit (which includes the Unit) and Improvements located thereon in a clean and sanitary condition, free of pests and rodents, and uncluttered at all times in order to preserve and enhance the enjoyment of the Project, and as further set forth in this Declaration.

12.2 Repairs by Association. In the event that an Owner permits his Unit or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Unit and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the Association a lien on the Unit and any Improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring

foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Unit in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

12.3 Alterations of Exterior Appearance. The Owners will maintain their Units and Improvements in substantially the same condition and appearance as that approved by the Board. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Board.

12.4 Repair Following Damage. In the event of casualty loss or damage to the improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Board, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. Unless delayed by City/County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Unit for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

ARTICLE XIII GENERAL ARCHITECTURAL RESTRICTIONS ON IMPROVEMENTS

13.1 The architectural restrictions for Improvements within the Project are contained in the Design Guidelines. During the Class B Control Period, the Declarant may revise the Design Guidelines at any time.

13.2 Exemption of Declarant. At any time during the Class B Control Period, Declarant and Declarant Related Entities need not submit or receive any approval from the Board whenever such approval is required for the installation of Improvements within the Project.

13.3 Approved Builder. During the Class B Control Period, only contractors approved in advance by Declarant, in its sole discretion, may construct Improvement(s) upon the Units.

ARTICLE XIV INSURANCE

14.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by the Act. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies

may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

As used in this Article:

- (1) "Covered Loss" means a loss, resulting from a single event or occurrence that is covered by the Association's property insurance policy.
- (2) "Unit Damage" means damage to a Unit.
- (3) "Unit Damage Percentage" means the percentage of total damage resulting in covered loss that is attributable to Unit Damage.

14.2 Property Insurance.

(a) Hazard Insurance.

- (i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas, Limited Common Areas Units, buildings and other facilities.

(1) At a minimum, any required blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles,

vandalism, smoke, theft, and storm water run-off, if reasonably available; and (2) all perils normally covered by "special form" property coverage.

(2) Any blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(b) Flood Insurance. If the property insured by the Association is not situated in a Special Flood Hazard Area, the Association may nonetheless, if approved by a majority of Owners, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

(c) Earthquake Insurance. The Association may nonetheless, if approved by a majority of Owners, purchase earthquake insurance to cover earthquakes not otherwise covered by blanket property insurance.

(d) Associations Obligation to Segregate Property Insurance Deductible. The Association shall keep an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(e) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible the Association need not tender the claim to the Association's insurer.

14.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

14.4 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy shall:

- (a) Include coverage for volunteers and employees;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and
- (d) Provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

14.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds that shall:

- (a) Provide coverage for an amount of not less than the sum of three months regular assessment in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and
- (b) Provide coverage for theft or embezzlement of funds by:
 - (i) Officers and Board of Directors member of the Association;
 - (ii) Employees and volunteers of the Association;
 - (iii) Any manager of the Association; and

(iv) Officers, directors and employees of any manager of the Association.

14.6 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association; and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

14.7 Owner Act Cannot Void Coverage under Any Policy. An Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

14.8 Waiver of Subrogation against Owners and Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

14.9 Owners' Individual Coverage. **EACH OWNER SHOULD PURCHASE INDIVIDUAL INSURANCE COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT.**

ARTICLE XV DAMAGE & DESTRUCTION

15.1 Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

15.2 Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of

the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

15.3 In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

ARTICLE XVI **DISBURSEMENT OF PROCEEDS**

16.1 If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner(s) shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account.

ARTICLE XVII **REPAIR AND RECONSTRUCTION**

17.1 If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

ARTICLE XVIII **CONDEMNATION**

18.1 Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of members representing at least sixty-seven percent (67%) of the total Association vote by any

authority having the power of condemnation or eminent domain), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Owners representing at least sixty-seven percent (67%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE XIX
MISCELLANEOUS PROVISIONS

19.1 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.

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

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

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

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

19.2 Association Litigation.

(a) In recognition of the expenses and disruption associated with litigation, the Association shall not commence a judicial or administrative proceeding without the

approval of the Declarant for so long as the Members govern the Association and thereafter only upon the approval of Owners representing at least 80% of the total vote of the Association.

(b) Neither the Association nor any Owner shall institute an action against any person which arises out of an alleged defect in the development of the Subdivision until: (i) Declarant and the person(s) who physically constructed the portion of the subdivision in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect or other portions of the Subdivision (provided, however, that the terms of this Section shall not create an obligation of any person to effect a repair of an alleged defect); (ii) the Association or Owner(s) have pursued their remedies under any express warranty covering all or any portion of the alleged defect; (iii) the Declarant and the affected contractor(s) have been given the opportunity to be heard at a meeting of the Association regarding the alleged defect; and (iv) all proposed parties to the action have been given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation.

(c) Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant's contractors, or any other person or entity involved in the construction of the Units unless and until all of the following requirements have been satisfied:

(i) The Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten (10) years of experience in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "Litigation Budget"); and

(ii) The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget.

(d) If any claims or actions falling within the scope of this Section are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this

Section, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. Individual Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

(e) No action affected by this Section shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorney fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action.

(f) This Section shall not apply to: (i) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or, (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of an express contract with the Association or its manager for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

19.3 Repurchase Option for Construction Defect Claims. In the event any Owner shall commence action against Declarant or Declarant Related Entities (collectively "Declarant") in connection with any alleged construction defects in such Owner's Unit, Declarant shall have the option, but not the obligation, to purchase such Unit on the following terms and conditions:

(a) The purchase price shall be an amount equal to the sum of the following, less any sums paid to such Owner under any homeowner's warranty, in connection with the alleged defect:

(i) The purchase price paid by the original Owner of the Unit when originally purchased from Declarant;

(ii) The agreed upon value of any improvements made to the Unit by anyone other than Declarant; and

(iii) The Owner's reasonable moving costs; and

(b) Close of escrow shall occur not later than forty-five (45) days after written notice from Declarant to the Owner of Declarant's intent to exercise the option herein.

(c) Title shall be conveyed to Declarant free and clear of all monetary liens and other encumbrances other than non-delinquent real estate taxes.

(d) Exercise of the repurchase option as provided for herein above shall

constitute full and final satisfaction of all claims relating to the subject Unit. The Owner shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

(e) Declarant's option to repurchase granted herein with respect to any particular Unit shall automatically terminate upon the expiration of the last applicable statute of limitations applicable to any construction or warranty claim governing such Unit including all applicable tolling periods.

19.4 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Declaration, this Article and its subsections may not be amended except with the prior written consent of the Declarant.

19.5 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

19.6 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

19.7 No Representations and Warranties. Each Owner and occupant understands, agrees, and acknowledges through taking title or residing in the Project that the Declarant, Association and the Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Project.

19.8 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Plat, the Articles, Bylaws, and then the Rules.

19.9 Amendment. At any time while this Declaration is in effect, the covenants herein

contained can be modified by the Declarant or Declarant's successors and assigns during the Class B Control Period at the sole discretion of the Declarant. Thereafter, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

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

19.11 Notices. All notices under this Declaration are provided as set forth in the Bylaws.

19.12 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

19.13 Right to Modify Unit Boundaries and Interior Boundary Lines. Declarant reserves the unilateral right to modify Unit boundaries and interior boundary lines and/or combine Units so long as it owns the Units; provided, however, such changes may not extensively alter the boundaries of the Common Area and facilities nor change the percentages of ownership interest.

EXHIBIT "B"
ALLOCATED INTEREST

Unit No.	Building No.	% of Ownership in Common Areas & Facilities	No. of Votes Per Unit¹
A	A	6.66%	1
B	A	6.66%	1
C	A	6.66%	1
D	A	6.66%	1
E	A	6.66%	1
A	B	6.66%	1
B	B	6.66%	1
C	B	6.66%	1
D	B	6.66%	1
E	B	6.66%	1
A	C	6.66%	1
B	C	6.66%	1
C	C	6.66%	1
D	C	6.66%	1
E	C	6.66%	1

¹ Units owned by the Declarant shall have the number of votes set forth in Article VI.