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1178 W. Legacy Crossing Blvd., Suite 100  
Centerville, Utah 84014

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
TIVOLI GARDENS** D

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR TIVOLI GARDENS ("**Declaration**") is made by GMW Development, Inc., a Utah corporation ("**Declarant**") on the date set forth below.

**RECITALS**

A. The Declarant is the owner of certain real property located in the City of Syracuse ("**City**"), Davis County, Utah, more particularly described on **Exhibit A** attached hereto ("**Property**"). Declarant is developing the Property as a residential subdivision to be known as Tivoli Gardens ("**Project**"). The Project shall be subdivided into individual single-family lots ("**Units**") together with streets and certain common facilities.

B. Declarant intends to subject the Property to mutually beneficial restrictions under a common scheme and plan for the possession, use, enjoyment, repair, maintenance, and improvement of the Property.

C. The Tivoli Gardens Homeowners Association ("**Association**") has been incorporated as a Utah non-profit corporation to act as a homeowners association with the powers of managing and maintaining the Common Areas in the Project, including any roads not dedicated to the public, administering and enforcing this Declaration, and assessing and collecting from Owners a share of the costs for maintaining and repairing any and all Common Areas on the Property and performing such other acts as are provided for or set forth in this Declaration, the Association's Bylaws or which generally benefit the Property.

D. Declarant has adopted the covenants, conditions, restrictions, easements, servitudes, and limitations set forth in this Declaration (collectively, the "**Covenants**") for the purpose of:

- i. Helping to insure uniformity in the development of the Units;

ii. Creating certain covenants and use restrictions to help protect long-term property values and a desired quality of life in the Project;

iii. Facilitating the initial sale of Units by the Declarant, its successors and assigns, and subsequent sale by the individual Owners of Units in the Project, by assuring purchasers of uniformity and basic restrictions intended to preserve property values over time;

iv. Maintaining the Common Areas, including interior roads not dedicated to the public, located within the Project in accordance with these Covenants and with City standards; and

v. Providing for mandatory dispute resolution procedures and requirements to avoid litigation, as set forth in Article 13.

NOW, THEREFORE, the Declarant does hereby establish the Covenants and does hereby declare that the Property, and all Units within the Project, shall be held, sold, conveyed, leased, and rented subject to, and shall be encumbered by, the Covenants set forth below which shall be run with the Land and be binding on all persons or entities now or hereafter having or claiming any right, title, or interest in the Property, or any of the Units within the Project.

## ARTICLE 1 – DEFINITIONS

Capitalized terms not identified shall have the meaning identified in the *Bylaws of Tivoli Gardens Homeowners Association*. The plural of any word identified below shall have the same meaning as the singular and vice versa. The following words when used in this Declaration shall have the following meanings:

1.1 “Act” means the Utah Community Association Act, Utah Code Ann. § 57-8a-101 *et seq.*, as amended from time to time.

1.2 “Assessment” means any of the fees, assessments, or payments required to be made by Owners of Units within the Project, including the reinvestment fee, annual assessments, supplemental assessments, and special assessments, as more particularly described in Article 4.

1.3 “Association” means Tivoli Gardens Homeowners Association.

1.4 “Bylaws” means the *Bylaws of Tivoli Gardens Homeowners Association*.

1.5 “Board” means the Board of Directors of the Association.

- 1.6 "City" means the City of Syracuse, a political subdivision of the State of Utah.
- 1.7 "Common Areas" mean the portions of the Project intended for common use by the Owners which are not included within the Units and which are not dedicated or reserved for public use, as set forth on the Plat Map. The Common Areas are more particularly identified in Section 5.1.
- 1.8 "Common Expenses" means all sums lawfully assessed against the Units or the Owners; expenses of administration, maintenance, repair or replacement of the Project; all expenses allocated by the Association among the Owners; all expenses agreed upon as common expenses by the Association; and all expenses declared common expenses by this Declaration.
- 1.9 "Covenants" means every covenant, condition, restriction, easement, and limitation set forth in this Declaration.
- 1.10 "Declarant" means GMW Development, Inc., and any assign or successor that acquires Declarant's interest in the Property.
- 1.11 "Declaration" means this *Declaration of Covenants, Conditions and Restrictions for Tivoli Gardens* as it may be amended from time.
- 1.12 "First Mortgage" means a recorded Mortgage or consensual lien granted by the Owner which is not subject to any senior lien or encumbrance except liens for taxes or other liens which are given priority by statute.
- 1.13 "First Mortgagee" means any person or entity named as a Mortgagee under a First Mortgage and any successor-in-interest to such Mortgagee.
- 1.14 "Improvement" means every structure, feature or improvement of any kind placed or constructed in the Project, including but not limited to any Residence, building, garage, lighting, deck, porch, patio, sidewalk, foundation, awning, fence, retaining wall, driveway, irrigation or drainage feature, storage structure or other product of construction and also includes landscaping.
- 1.15 "Member" means a person or entity who is a member of the Association.
- 1.16 "Mortgage" means any mortgage, deed of trust, or other document pledging any portion of a Unit or interest therein as security for the payment of a debt or obligation.

1.17 "Mortgagee" means the mortgage or beneficiary identified in a Mortgage.

1.18 "Owner" means the person or entity vested with legal, record fee simple title to any Unit. If there is more than one record holder of legal title to a Unit, each shall be an Owner.

1.19 "Period of Declarant's Control" means the period of time during which Declarant shall have administrative control of the Association and the other rights and privileges as set forth in this Declaration. Following the recording of this Declaration, the Period of Declarant's Control shall continue until such time as Declarant sees fit to, by written notice, transfer administrative control of the Association to the Owners, but in no event shall the Period of Declarant's Control extend beyond the time when one hundred percent (100%) of the Units in the Project have been conveyed to individual purchasers.

1.20 "Plat Map" means the plat map entitled *Tivoli Gardens (Phase 1)* and any plat incorporating additional real estate into the Project. A copy of the Plat Map current as of the date of this Declaration is attached hereto as **Exhibit B**. Declarant reserves the right to modify the terms of any revised or amend the plat for Tivoli Gardens Phase 1. Any such revisions or amendments recorded in Davis County shall be deemed the Plat Map for purposes of this Declaration. Also, Declarant may expand the Project to include Tivoli Gardens Phase 2. In the event the project is expanded and a plat for Tivoli Gardens Phase 2 is recorded with Davis County, Plat Map shall refer to the plats for both Tivoli Gardens Phase 1 and Tivoli Gardens Phase 2.

1.21 "Project" means Tivoli Gardens, as identified on the Plat Map. The Project is not a cooperative.

1.22 "Property" means the real property situated in Davis County, State of Utah, as more particularly described in **Exhibit A**, against which this Declaration is recorded.

1.23 "Residence" means the dwelling structure on a Unit in the Project. As shown on the Plat Map, the Residences within the Project are intended for occupation by a single family, meaning: (a) a single person, (b) a group of people related to each other by blood, marriage, adoption, guardianship, or other legally authorized custodial relationship, together with not more than two additional unrelated persons, (c) a group of not more than four unrelated persons, together with the children, if any, of such persons, maintaining a common household.

1.24 "Rules and Regulations" means the rules, regulations, and restrictions, not inconsistent with this Declaration or the Bylaws, duly adopted and promulgated by the Board.

1.25 “Unit” means a subdivided and individually numbered residential parcel as designated on the Plat Map recorded with Davis County.

## ARTICLE 2 – PROPERTY SUBJECT TO THIS DECLARATION

2.1 Property. The Property, as identified in Exhibit A, together with additional phases of the Project is, and henceforth shall be, held, occupied, transferred, sold, and conveyed subject to the Covenants set forth in this Declaration. The Project consists of single family residential Units as shown on the Plat Map.

2.2 Covenants Run with the Land. This Declaration, and the Covenants herein, shall run with the land and shall be binding on all persons or entities holding or taking title to any interest in the Property or any Unit therein, and all Owners shall hold or take title subject to this Declaration.

2.3 Applicability of the Act. Declarant hereby confirms and acknowledges that the Project is subject to the provisions of the Act with respect to items not addressed in this Declaration but covered by the Act.

2.4 Local Laws and Ordinances Applicable. The Property is located in Syracuse City, Davis County. In addition to the Covenants set forth in this Declaration, the Property and any Unit therein is subject to local laws and ordinances, including applicable building codes and zoning ordinances, now or hereafter in effect.

2.5 Expandability. The Project is expandable. Declarant hereby reserves the right to expand the Project to include additional real estate adjacent to or nearby the Property, to be designated Tivoli Gardens Phase 2. In the event the plat map for Tivoli Gardens Phase 2 is recorded, the real property contained within the Tivoli Gardens Phase 2 plat map shall be subject to this Declaration and the Covenants contained herein. If the Project is expanded, all references to “Property” shall include all phases of the Project.

### 2.6 Enforcement of Covenants.

2.6.1 By the Association. The Association, through its Board, shall have the right to enforce compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations promulgated by the Board. The Board may impose reasonable fines for non-compliance or may pursue legal action. The Board may also suspend any services provided to an Owner who fails to comply, or whose Unit does not comply, with the Covenants set forth in this Declaration. The Board may also suspend voting rights or privileges related to Common Areas for non-compliance. Any costs

associated with the Association's enforcement of this Declaration may be assessed to the non-complying Owner as a special assessment.

2.6.2 By an Owner. Any Owner aggrieved by another Owner's non-compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, or the Rules and Regulations promulgated by the Board may commence an action seeking to enforce compliance with the same.

2.6.3 Injunction; Legal Fees. Under appropriate circumstances, the Association or an aggrieved Owner may seek a temporary restraining order or preliminary injunction to stop or prevent non-compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, or the Rules and Regulations promulgated by the Board. In any such legal action, the prevailing party shall be entitled to an award of reasonable costs and attorney fees. In addition, the Association shall have all enforcement rights and remedies set forth in the Act as the same may be amended from time to time.

### **ARTICLE 3 – ASSOCIATION AND MEMBERSHIP THEREIN**

3.1 Membership. Each and every Owner, by accepting a deed for any Unit, whether or not it shall be so expressed in such deed, automatically becomes a Member of the Association, and agrees to be bound by the Covenants identified herein and by such reasonable Rules and Regulations as may, from time to time, be established by the Association. Membership is mandatory for all Owners. When more than one person or entity is an Owner of a Unit, all such persons or entities shall be Members. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership of such Unit, whether by conveyance, intestate succession, testamentary disposition, foreclosure of a Mortgage, or such other legal processes as are now in effect or as may be hereafter established pursuant to the laws of the State of Utah. The foregoing is not intended to include persons or entities holding an interest merely as security for the performance of an obligation.

3.2 Transfer. Upon the transfer or conveyance of any Unit, the transferee or grantee shall become a Member, and the transferor or grantor shall immediately cease being a Member. The Board shall maintain a list of all Members and shall note each transfer of ownership on such list. Upon the transfer or conveyance of any Unit, the selling or transferring Owner shall promptly inform the Association of the name of the transferee or grantee.

3.3 Voting Rights. The Owner or Owners of each Unit shall be entitled to one (1) vote for each Unit owned. The one (1) vote for such Unit shall be exercised as they, among themselves, determine. Where a Unit is owned by more than one Owner, the vote of any one of

them shall be conclusively presumed to have been exercised as a result of an agreement among such Owners and in the event multiple Owners attempt to exercise a vote for such Unit on any question or issue, the Owners of such Unit will forfeit the right to vote on that question or issue. In no event shall more than one (1) vote be cast with respect to any Unit. With respect to any question or issue requiring a vote of the Association, vote of the Owners, or vote of the Members of the Association, the total number of votes cast shall not exceed the number of Units in the Project. Unless otherwise required by this Declaration or the Bylaws, the number of affirmative votes required for approval of any matter submitted to vote of the Members shall be a majority of the votes cast with respect to such matter. All voting rights shall be subject to the restrictions and limitations provided herein and in the Bylaws.

3.4 Meetings. Unless otherwise provided by this Declaration or by the Bylaws, all matters requiring a vote of the Members of the Association shall be decided at a meeting of the Members held for that purpose. Except in the case of an emergency or other situation which requires shorter notice, written notice designating the time and place of such meeting shall be provided to each Member no less than ten (10) or more than sixty (60) days in advance of a meeting. Other provisions for giving notice of such meetings, determining a quorum, and tallying votes shall be included in the Bylaws, or shall be established by the Board. In lieu of attending a meeting held for the purpose of exercising voting rights, Members may exercise such voting rights in writing or through a proxy, if designated in writing before the time for such vote. By attending a meeting where a vote is held, by exercising a vote in writing, or by designating a proxy, an Owner shall be conclusively deemed to have received adequate notice of such meeting or such vote.

3.5 Declarant Approval. Notwithstanding any other provision of this Declaration, during the Period of Declarant's Control all matters for which the Declaration or the Bylaws call for a vote of the Members of the Association may be decided solely by the Declarant with or without a meeting and with or without a vote of the Members. Any matters which are submitted to a vote of the Members during the Period of Declarant's control shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Period of Declarant's Control, all such matters shall be submitted to a vote of the Members of the Association and shall be decided solely by the votes of the Members.

3.6 Board of Directors. The Board shall be the governing body of the Association. In addition to those set forth herein, the powers, rights, privileges, and duties of the Board shall be set forth in the Bylaws. During the Period of Declarant's Control, the Declarant shall appoint the members of the Board, which shall number no less than three (3) directors. After the Period of Declarant's Control, the members of the Board shall be chosen, removed, or replaced by the vote of the Members of the Association in accordance with the provisions of the Bylaws.

3.7 Professional Management. The Association may carry out the functions required of it pursuant to this Declaration, the Bylaws, or the Rules and Regulations, to the extent such functions are properly delegable, by and through a professional manager (“**Manager**”). If a Manager is engaged, the Manager shall be an independent contractor and not an employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by the Board, be authorized to perform any of the properly delegable functions or acts required or permitted or performed by the Association.

3.8 Bylaws. Nothing in the Bylaws shall substantially alter, amend, or impair the rights and obligations of the Owners set forth in this Declaration.

#### ARTICLE 4 – ASSOCIATION ASSESSMENTS

4.1 Covenant to Pay Assessments. The Owner of any Unit, excluding Declarant whose obligations regarding Assessments are set forth below, by accepting a Deed for said Unit, whether or not it shall be expressed in the deed, agrees and is deemed to have agreed to pay to the Association all fees, annual assessments, supplemental assessments, and special assessments as set forth in this Declaration.

4.2 Purpose of Assessments. The operations and obligations of the Association, as identified in the Act, this Declaration, and the Bylaws, shall be funded through fees, annual assessments, supplemental assessments, and special assessments levied against the Units.

4.3 Types of Fees and Assessments. The Association may impose the following fees and assessments:

4.3.1 Reinvestment Fee. The initial Owner of a Unit from the Declarant, and each subsequent Owner of a Unit, shall be obligated to pay the Association a Reinvestment Fee. If not paid at the closing of such Owner’s purchase of a Unit, the Reinvestment Fee shall be due and payable to the Association within the first calendar month of ownership of a Unit. The Reinvestment Fee shall be dedicated to meeting the Association’s obligations and benefitting the Property and may be used for any purpose allowed by law. The amount of the Reinvestment Fee shall be fixed and, from time to time adjusted, by the Declarant during the Period of Declarant’s Control and thereafter by the Board.

4.3.2 Annual Assessment. After the first calendar month of ownership, each Owner shall pay an annual assessment for each Unit owned by such Owner. The annual assessment shall be the Unit’s share of the total annual amount necessary for the Association to perform all of its obligations, whether imposed by the Act, this Declaration, or the Bylaws. Without limitation, the annual assessment shall include each



Unit's share of the Common Expenses including the cost to maintain and preserve the Common Areas, including insurance thereon, the amounts necessary to perform the Association's other maintenance obligations, the amounts necessary to fund the Association's reserve fund in a manner consistent with the Act, the Association's administrative expenses, and the amount any obligations imposed on the Association by any applicable law, ordinances, or regulations, all of which shall be identified in the Association's budget. The annual assessment shall be fixed, and from time to time adjusted, by the Declarant during the Period of Declarant's Control and thereafter by the Board in accordance with the provisions of the Act. At a minimum, the Board or the Declarant shall review the annual assessment on an annual basis and make such adjustments as are necessary. The Declarant or the Board may require that the annual assessment attributable to each Unit be divided in twelve equal shares and paid in the form of a "monthly membership assessment," to be due and payable each month on a date fixed by the Board. Subject to the exemption for the Declarant set forth below, the amount of the annual assessment shall be fixed at a uniform rate for each Unit assessed and shall be a portion of the Association's annual Common Expenses determined by dividing the total Common Expenses by the number of Units to which assessments are imposed. As additional Units are constructed or conveyed to purchasers, the Declarant or the Board shall adjust the amount of the annual assessment accordingly. After the period of Declarant's Control, the Board may not increase the amount of an annual assessment for any fiscal year by more than 20% over the previous fiscal year's annual assessment without first obtaining the affirmative vote of a majority of the Members at a meeting of the Association called for such purpose.

4.3.3 Supplemental Assessment. In the event the annual assessment is insufficient to meet the Association's regular recurring obligations in any given fiscal year, the Declarant during the Period of Declarant's Control or the Board thereafter may assess a supplemental assessment against each Unit for a share of any supplemental amount necessary to meet the Association's annual obligations. Each Unit's share of a supplemental assessment shall be determined in the manner for annual assessments as set forth in Section 4.3.2.

4.3.4 Special Assessment. The Declarant during the Period of Declarant's Control or the Board thereafter may assess a special assessment to pay for special, non-recurring, or emergency expenses of the Association or the Project which exceed the Association's annual budget for the fiscal year during which such expenses arise, including but not limited to expenses related to damage to the Project, unanticipated repairs, and Common Area improvements. Any special assessment shall represent the pro-rata share of such expenses attributable to the Unit or Units benefited by such expenses, or to which such expenses apply. In the event such expenses apply to or benefit

less than all the Units in the Project, the Declarant or Board may impose a special assessment against less than all of the Units in the Project.

4.3.5 Capital Improvements. Notwithstanding any other provision of this Declaration, after the Period of Declarant's Control, the Association shall not make any Capital Improvement without the authorization of 67% of the Owners voting at a meeting called for the purpose of proposing such Capital Improvement. For purposes of this Section, a "Capital Improvement" shall mean the installation of new Improvement, or a major upgrade to an existing Improvement, located within a Common Area or other portion of the Project managed by the Association, for which funds are not otherwise identified in the Association's budget. If approved as provided in this Section, the cost of a Capital Improvement may be assessed to the Units as a special assessment.

4.4 Budget. The annual assessment shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided that for the first fiscal year shall begin on the date of the conveyance of the first Unit by Declarant. On or before December 1 of each year thereafter, the Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, the anticipated receipts (if any), and any deficit or surplus from the prior operation period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period. On or before December 1 of each year, the Board shall also notify each Owner of the amount of the following fiscal year's annual assessment for each Unit owned by such Owner.

4.5 Lien and Personal Obligation. The fees and assessments identified above, together with any applicable late payment fees, interest, costs, and reasonable attorney fees, shall be a charge and lien against the Unit against which such assessment is imposed. In addition, each Owner's obligation to satisfy such assessments is an independent and personal covenant of such Owner, with all amounts being due and payable without setoff or deduction when assessed. In the event of a failure to pay such assessments, or other default, the Association may pursue an action against the Owner to collect the assessment and enforce the lien against a Unit by foreclosure in the manner set forth below. The Association's lien shall be a continuing lien on each Unit and shall be subordinate to a First Mortgage, where the Mortgagee is a lender who loaned funds for the purchase of the Unit, and shall also be subordinate to a lien for property taxes or other public assessments, but the Association's lien shall be superior to all other liens, charges, or encumbrances of any sort which shall hereafter arise or be imposed on any Unit. The Association's lien shall not be affected by the sale or transfer of any Unit.

4.6 Statement and Evidence of Payment. Upon receipt of a written request by an Owner, or any other person or entity, the Board shall within a reasonable time issue to such Owner or other person or entity a written certificate stating, as applicable, (i) that all annual, special, and supplemental assessments (plus any applicable costs or fees) have been paid with respect to any specified Unit as of the date of the certificate, or (ii) if all assessments have not been paid, the amount of such outstanding annual, special, or supplemental assessments (plus any applicable costs or fees) due and payable as the date of the certificate. The Board may make a reasonable charge for issuing such certificates. Any such certificate, when issued as provided herein, shall be conclusive and binding with respect to any matter therein stated.

4.7 Declarant Exemption. No assessment for a Unit owned by the Declarant shall be imposed until after a certificate of occupancy for such unit has been granted by the City. Notwithstanding any other provision of this Declaration, after a certificate of occupancy is issued Declarant shall pay only twenty-five percent (25%) of any assessment attributable to each Unit owned by Declarant until such Unit is conveyed to a purchaser. After the date the Unit is conveyed, the full amount of the assessment attributable to such Unit shall be imposed and collected from the new Owner in the manner set forth in this Declaration. If, however, during the time the Declarant qualifies for the reduced assessment set forth in this Section, the total assessments for any fiscal year shall fail to equal or exceed the Association's actual expenses during such fiscal year, the Declarant shall pay the Association an amount, up to the difference between the full amount otherwise attributable to the Units owned by the Declarant in such fiscal year and amount of any assessments actually paid. The Declarant's obligation to make such a remedial payment shall be contingent on the Association giving the Declarant notice of such deficit within sixty (60) days following the termination of the fiscal year in which a deficit existed.

4.8 Effect of Non-Payment and Remedies.

4.8.1 Late Fees and Interest. Any assessment not paid within ten (10) days from the due date thereof shall be subject to a late payment fee in an amount to be determined by the Board. In addition, all fees and assessments not paid when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Board.

4.8.2 Legal Remedies. The Association may bring an action at law against the Owner personally obligated to pay the same, and may foreclose the lien against such Owner's Unit in the manner provided by the laws of the State of Utah, and in the event a judgment is obtained, such judgment shall include interest on the assessment and reasonable attorney fees to be fixed by the court, together with the costs of the action. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to

estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose the Association's lien for any subsequent assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the membership votes appurtenant to ownership of such Unit, and to convey or otherwise deal with such Unit. In addition to the other rights and remedies set forth herein, the Association shall have all of the rights and remedies pertaining to enforcement of assessment liens as set forth in, and to be exercised in accordance with, the provisions of the Act, including, without limitation, the provisions in Utah Code Ann. §§ 57-8a-302 and -303, as the same may be amended. To this end, the Declarant (and each Owner by acceptance of a deed to a Unit) hereby conveys and warrants pursuant to Utah Code Ann. §§ 57-1-20 and 57-8a-302 to Cottonwood Title Insurance Agency, Inc., as trustee, 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. The Association shall have the right to substitute said trustee and appoint a successor trustee as provided by statute. The lien of the Association shall be superior and prior to all other liens and encumbrances except liens and encumbrances recorded prior to the recordation of this Declaration, a First Mortgage on a Unit, and assessments, liens, and charges in favor of the State of Utah or a political subdivision thereof imposed for taxes or other governmental assessments or charges past due and unpaid. In any action brought by the Association (or counterclaim or cross-claim brought by the Association) to collect assessments or to foreclose a lien for unpaid assessments, the Association shall be entitled to have a receiver of the Owner appointed to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's assessments of any kind or nature permitted hereunder.

## ARTICLE 5 – COMMON AREAS

5.1 Identification. The Project shall have Common Areas consisting of portions of the Project intended for the common use of the Owners, including areas designated as Common Areas on the Plat Map attached hereto as **Exhibit B**. Common Areas may include sidewalks adjacent to public streets, open space, drainage facilities, common signage, and common landscaping. The Declarant during the Period of Declarant's Control and the Association thereafter may install additional amenities on Common Areas which are deemed appropriate or beneficial to the Project. Without limitation, the Common Areas in the Project shall include the following:

5.1.1 Detention Basin. “Parcel A,” as identified on the Plat Map, shall be a detention basin for the Project. The Association shall maintain the detention basin in a manner consistent with approvals for the Project received from the City.

5.1.2 1000 West Open Space. A strip of land consisting of the eastern eight feet (8’) of all parcels of land in the Project which are adjacent to, and situated to the west of, 1000 West Street, shall be, and remain, a permanent open space area (“**1000 West Open Space**”) as identified on the Plat Map.

5.1.2.1 Designated Parcels and Easement. Without limitation, the 1000 Open Space shall consist of the parcels in Phase 1 of the Project designated as “Parcel B” and “Parcel C” on the Plat Map. In addition, the Declarant hereby grants to the Association a perpetual easement over a strip of land comprising the eastern eight feet (8’) of all parcels of land in the Project adjacent to, and to the west of, 1000 West Street for the purpose of maintaining open space (“**Open Space Easement**”) as shown on the Plat Map. The land within such Open Space Easement shall be part of the 1000 West Open Space. Any Units adjoining 1000 West Street (“**Burdened Parcels**”) shall be subject to the Open Space Easement, which shall be for the benefit of the Association and all Owners. Any Owner or other person or entity taking title to, or any other interest in, any of the Burdened Parcels takes subject to the Open Space Easement. Each Owner of a Burdened Parcel may maintain landscaping consistent with the designation of open space, as defined below, but shall not install Improvements of any sort other than approved landscaping within the Open Space Easement.

5.1.2.2 Open Space Defined. For purposes of this Section, “open space” shall mean land on which no Improvements or pavement of any sort shall be constructed or installed other than landscaping as approved by the Board and no activities shall be permitted which would block or obstruct the 1000 West Open Space including, without limitation, the construction of buildings or structures of any kinds or the storage of refuse, building materials, vehicles, trailers, machinery, or equipment of any sort. The 1000 West Open Space shall not be used for parking or any other activities specifically prohibited by the Board. Neither the Association nor any Owner shall do or permit anything in, on, or about the 1000 West Open Space which interferes with its open space character.

5.1.2.3 Maintenance of the 1000 West Open Space. The Association shall maintain the entire 1000 West Open Space in a neat and tidy manner, including maintaining appropriate landscaping, provided that the owner of any Burdened

Parcel may elect to maintain the portion of the 1000 West Open Space within such Burdened Parcel consistent with the open space requirements set forth above. The 1000 West Open Space shall not be dedicated or transferred to the City or any other public or governmental entity and under no circumstances shall the City be obligated to maintain the 1000 West Open Space. However, in the event the Association or any Owner fails to properly maintain the 1000 West Open Space, the City may, at the City's option, maintain the 1000 West Open Space and charge all costs associated therewith to the Association or the Owners.

5.2 Use and Enjoyment. Each Owner shall have a non-exclusive right to use and enjoy the Common Areas. The right of use and enjoyment shall include an access easement to and over all Common Areas. The right to use and enjoy the Common Areas shall be appurtenant to such Owner's ownership of a Unit within the Project and shall immediately transfer upon any conveyance of the Unit.

5.3 Ownership. The Common Areas, except those portions of the 1000 West Open Space within a Burdened Parcel, shall be jointly owned by all Owners of Units with each Owner's ownership interest being an undivided fractional share in a percentage equivalent to the total number of Units owned by such Owner divided by the total number of Units in the Project. Title to each Owner's share of the Common Areas shall pass with a transfer of title to the Unit, whether or not such ownership interest is specifically mentioned in the instrument of transfer.

5.4 Rules to be Promulgated by the Board. Notwithstanding the foregoing, the Rules and Regulations promulgated by the Board may include reasonable restrictions on the time, manner, and character of use of the Common Areas by the Owners, their guests, or invitees, including the limitations on total number of persons permitted to use the Common Areas at any given time.

5.5 Maintenance. The Association directly, or through designated agents, shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace and maintain the Common Areas. The Association shall maintain all landscaping of the Common Areas. The Association shall pay all the cost for all utility charges attributable to the Common Areas. No Owner, directly or indirectly, shall make any alterations to any Common Areas without prior written consent of the Board.

5.6 No Obstruction. No person shall obstruct or permanently occupy any portion of a Common Area without prior written permission of the Board.

5.7 Limitations on Use. In addition to restrictions set forth in the Rules and Regulations, an Owner's right to use and enjoy the Common Areas may be temporarily or permanently restricted in the following circumstances:

5.7.1 Any period during which the fees or assessments imposed against such Owner's Unit remain unpaid.

5.7.2 Any period during which such Owner, such Owner's Unit, or any Improvement upon such Owner's Unit is or remains in a state of non-compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, or the Rules and Regulations promulgated by the Board, provided that such Owner shall have thirty (30) days after receiving written notice of such non-compliance to remedy the same before any restriction shall be imposed under this subsection.

5.7.3 Any other reasonable grounds as determined by the by the Board and promulgated in the Rules and Regulations.

#### **ARTICLE 6 – PROPERTY RIGHTS, LIMITATIONS, AND USE RESTRICTIONS**

6.1 Residential Use and Occupancy. Each Unit, and all Improvements thereon, shall be used only for residential purposes. No Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Unit, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance.

6.2 No Further Subdivision. No Unit or Common Area shall be further subdivided or separated into smaller parcels. No conveyance of less than all of any Unit shall be permitted without prior written approval from the Board.

6.3 Prompt Repair. Each Residence and other Improvement on an Owner's Unit shall be kept in good repair. As applicable, the Owner or Association shall promptly repair damage to any Residence or Improvement on such Owner's Unit. Repairs shall be made in accordance with the design guidelines promulgated by the Association's Architectural Control Committee.

6.4 Nuisance. No Owner shall use, or permit a guest or invitee to use, a Unit in a manner that constitutes a nuisance or unreasonably interferes with the use and enjoyment of any other Unit by the Owner or Owners thereof. Each Unit shall be bound by, and the Owner shall comply with, the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations promulgated by the Board. Without limiting the foregoing, no rubbish or debris of any kind may be permitted to accumulate on the Project in a manner that becomes unsightly or

causes offensive odors. No unreasonably loud or disruptive noises shall be permitted in the Project.

6.5 Temporary and Other Structures. No temporary or prefabricated structures shall be permitted or used in the Project.

6.6 Offensive, Unsightly, and Unsafe Conditions. No Owner shall permit any noxious, offensive, unsightly, or unsafe activity, object, animal, or condition to exist on such Owner's Unit. Without limiting the generality of the foregoing, trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Unit, except within an enclosed structure or when appropriately screened from view. No Owner shall dispose, or permit to be disposed, any oil, gas, toxic or hazardous material, or other unsafe substance within the Project. The Board may adopt reasonable Rules and Regulations to further clarify the responsibilities of Owners under this Section.

6.7 Signs. Without restricting the right to display political, religious, and holiday signs, the Association may impose design guidelines for the display of any signs in the Project and may adopt Rules and Regulations restricting the time place and manner in which signs are displayed. However, the Declarant may display signs in connection with the development of the Project and the sale of Units, and Owners may display signs of customary and reasonable dimensions on a Unit advertising a Unit for sale or lease. Except for signs maintained by Declarant, display of any "for sale" or "for lease" sign more than three (3) feet by two (2) feet shall require the prior written approval of the Association. A residential identification sign is permitted but should not exceed one (1) square foot in surface area. Numbers on Residences shall be located in a position clearly legible from the street, but not more than six (6) feet above the floor of the main floor level.

6.8 Rooftop Antennas. The Architectural Control Committee's design and maintenance criteria shall include guidelines regulating the installation of television, ham radio, citizens band, or radio antennas, satellite dishes, and other similar devices ("**Antennas**"). The ACC's design and maintenance criteria regulating Antennas shall comport with all applicable federal, state, and local laws and regulations governing Antennas and no Antennas shall be



installed within the project without the approval of the ACC. Notwithstanding the foregoing, however, Declarant reserve the right and option, for itself and for the association, to install cable or other data service lines and antennas as needed throughout the Project in connection with its development.

6.9 Pets. The Board may adopt Rules and Regulations establishing reasonable restrictions on the type and number of pets permitted within the Project. Poultry, livestock, and other non-domesticated farm animals shall not be permitted within the Project. No pets which constitute a danger or nuisance shall be permitted within the Project.

6.10 Ingress and Egress. Each Owner shall have a right of ingress to and egress from such Owner's Unit, with such right of ingress and egress being perpetual and appurtenant to ownership of the Unit.

6.11 Vehicles. The Board may adopt Rules and Regulations governing the parking, repair, and storage of vehicles within the Project. Vehicles parked, repaired, or stored in violation of this Declaration or the Rules and Regulations may be towed and impounded, at the Owner's expense, without further notice. No off-road motorcycles, ATVs, snowmobiles, or similar off-road vehicles shall be operated within the Project.

6.12 Encroachment. No Improvement on any Unit shall encroach on an adjoining Unit or Common Area and any such encroaching Improvements must immediately be removed at the expense of the Owner of the Unit from which the Improvement encroaches. If, however, encroachment occurs due to natural settling or shifting or for other reasons beyond the control of the Owner, the Owner shall be deemed to have an easement for the maintenance of such encroaching Improvement which shall exist, and shall run with the land, for so long as the encroaching Improvement exists.

6.13 Leases. Any lease agreement relating to any Unit shall be subject to all the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations promulgated by the Board. All leases shall be in writing and shall specifically reference the existence and applicability of this Declaration, the terms of the Bylaws, and the Rules and Regulations. An Owner shall be responsible and liable for any damage to the Project caused by such Owner's tenant.

6.14 Short Term Rentals and Timeshares. Unless prohibited by local ordinance, the Board may adopt Rules and Regulations permitting overnight or short term rentals within the Project. No Owner shall use a Residence or other Improvement on a Unit for purposes of overnight or short term nightly rentals unless the Board has approved the practice of short term rentals and has established appropriate guidelines. Any overnight or short term rental agreement

shall be in writing and shall reference the existence and applicability of this Declaration, the terms of the Bylaws, and Rules and Regulations. An Owner shall be responsible and liable for any damage to the Project caused by such Owner's short term guest. Any overnight or short term rental arrangement shall comply with all laws and ordinances governing short term nightly rentals. No timesharing arrangement or timeshare interest, as defined in Utah Code Ann. § 57-19-2, is permitted within the Project.

6.15 Declarant Exemption. Notwithstanding any other provision of this Declaration, the Declarant may use any Unit owned by it, and during the Period of Declarant's Control may also use the Common Areas, for any purposes, including construction purposes, consistent with or intended to facilitate the improvement and sale of the Units owned by Declarant. Declarant may use and maintain temporary structures on the Project. Declarant may operate one or more construction or sales offices and one or more model homes within the Project. Declarant shall also have the right to maintain a reasonable number of signs, banners, or similar devices throughout the Project. Declarant may from time to time relocate any of its sales offices, model homes, signs, banners or similar devices.

## **ARTICLE 7 – MAINTENANCE AND OTHER OBLIGATIONS**

7.1 Owner's Compliance with Declaration. Each Owner shall fully comply with, and shall cause such Owner's guests and invitees to fully comply with, the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations promulgated by the Board.

7.2 Maintenance by Owner. Each Owner shall maintain such Owner's Unit, and all improvements thereon, in good repair and in a clean and tidy manner, and in accordance with all the Covenants set forth in this Declaration and the ACC's design and maintenance criteria, so as to not detract from the overall appearance of the Project. The Owner shall maintain the Residence and all other Improvements in a safe and functional condition. Each Owner shall maintain such Owner's Unit at the Owner's expense without any setoff right. The Board may adopt reasonable Rules and Regulations governing the appearance and use of driveways, decks, patios, and balconies within the Project.

7.3 Maintenance by Association.

7.3.1 The Association shall maintain Common Areas including, opens spaces, trails, roads, and other portions of the Project not within a Unit and not dedicated to the public. The Association shall maintain the storm water detention system identified on the Plat Map as "Parcel A" and the 1000 West Open Space. The Association shall keep Common Areas and other areas for which it is responsible clean, appropriately landscaped, functional, attractive, and generally in good condition and repair consistent with any applicable requirements of the City.

7.3.2 In the event that maintenance or repair to Common Areas is caused by the willful or negligent acts of any Owner or group of Owners, or by their guests or invitees, the cost of maintenance may be assessed solely to the responsible Owner or Owners as a special assessment.

7.4 Maintenance by Syracuse City. Syracuse City shall have the right, but not the duty, to perform maintenance to the storm water management system and 1000 West Open Space if the Association fails to adequately perform the same. Syracuse City shall give the Association notice and an opportunity to cure before performing such maintenance. If Syracuse City performs maintenance pursuant to this Section, it shall be entitled to recover the costs thereof, including attorney fees, if collection of such costs by legal action is necessary.

7.5 Utilities. The Owner of each Unit shall pay for all utility services provided to such Unit, except utility services which are not separately billed or metered. Any such common utilities shall be paid by the Association and an appropriate share shall be charged to each Unit as part of the annual assessment.

7.6 Remedies. Among other available remedies, the Association shall have the right to enter each Owner's Unit and perform maintenance otherwise required to be performed by an Owner and to recover the cost of such maintenance from such Owner as an Assessment against such Owner's Unit if the Association determines that such Owner is unwilling or unable to timely perform such maintenance. Except in the case of an emergency, the Association may not exercise this remedy unless: (a) the Owner has been given written notice of the need to perform such maintenance and fifteen (15) days have elapsed since such notice was given without the required maintenance being performed by such Owner, and (b) the Owner is given the opportunity for a hearing before the Board.

## **ARTICLE 8 – ARCHITECTURAL CONTROL**

8.1 Residential Structures. The primary Improvement on each Unit shall be residential structure. Any other Improvements on the Unit shall be consistent with and shall not detract from the residential nature of the Project. Subject to the Declarant exemption, below, there shall be no temporary or prefabricated structures, mobile homes, trailer houses, or other non-permanent structures allowed in the Project.

8.2 Construction. Unless otherwise permitted by the Board, all Improvements must be completed within twelve (12) months from the commencement of construction. For Residences, this includes all exterior painting and finish work and the installation of all required landscaping. During the construction of any Improvement, the affected Unit must be kept reasonably clean and tidy and all construction debris must be controlled and regularly removed. All construction

activities must comply with the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations promulgated by the Board and all local zoning ordinances, building codes, and other applicable laws.

8.3 Architectural Control Committee.

8.3.1 There shall be an Architectural Control Committee (“ACC”) of the Association. During the Period of Declarant’s Control, Declarant shall select the members of the ACC, which shall number no less than three (3) members. During the Period of Declarant’s Control, members of the ACC do not need to be Owners. After the Period of Declarant’s Control, the Board shall select not less than three (3) Owners to be the members of the ACC. The Board may, from time to time, remove or replace members of the ACC. Until the ACC is appointed, the Board shall perform all functions and exercise all rights of the ACC set forth herein.

8.3.2 The ACC shall promulgate design and maintenance criteria for residential structures all other Improvements permitted within the Project. The design and maintenance criteria shall be consistent with the building, land use, and other ordinances and regulations promulgated by the City. The ACC may regulate the placement of signs, banners and similar displays within the Project. The ACC shall make such design and maintenance criteria available to all Owners or prospective Owners and, if possible, shall publish the design and maintenance criteria in electronic format.

8.3.3 All Residences, fences, and other Improvements shall be constructed and maintained in accordance with the ACC’s design and maintenance criteria. Prior to construction, alteration, modification, or replacement of any Improvements within the Project, an Owner shall submit plans for the same to the ACC. The ACC shall evaluate all such plans for compliance with the ACC’s design and maintenance criteria.

8.3.4 The ACC may employ architects, engineers, and other professionals to review plans submitted by an Owner. The Owner shall pay all expenses reasonably associated with the ACC’s review of the plans.

8.3.5 The ACC shall approve or deny such plans in writing within thirty (30) business days following receipt of the same. Failure to approve or deny such plans within the time period provided shall constitute an approval.

8.3.6 The ACC shall have the right, but not the duty, to enforce compliance with the design criteria, including by means of fines levied by the Association or by legal

action, in which case the ACC shall be entitled to recover the costs of enforcement, including reasonable attorney fees.

8.4 Declarant Exemption. Nothing in this Article 8 shall prohibit or restrict the ability of the Declarant to use any Units owned by Declarant, and the Common Areas during the Period of Declarant's Control, for any purposes consistent with or intended to facilitate the improvement and sale of Units owned by Declarant. Declarant may maintain and operate temporary structures for construction, sales, or business purposes. Declarant shall not be bound by the ACC's design and maintenance criteria and reserves the right to alter or modify the plans for any Improvement on any Unit at any time Declarant owns such Unit. Declarant shall not be bound by the time limitation for construction activities set forth in this Declaration. Declarant's sales and marketing activities are exempt from the ACC's design and maintenance criteria.

## ARTICLE 9 – EASEMENTS

9.1 Easements Shown on Plat Map. The Property and Units are subject to the easements, rights of way, encroachments, and other encumbrances as shown on the Plat Map. Within such easements, no Improvement of any type shall be placed or permitted to remain which may damage or interfere with the intended purpose of such easement.

9.2 Easements Reserved. In addition to easements shown on the Plat Map or otherwise provided for in this Declaration, the following easements are reserved for the benefit of the Owners and the Association:

9.2.1 Easement for Encroachment. If, because of an error in original construction, an error on the Plat Map, natural settling or shifting of the earth, or good faith mistakes during repair or reconstruction, any part of the Common Areas encroaches on an adjoining Unit, an easement for the encroachment and for maintenance of the Common Areas shall exist in favor of the Declarant during the Period of Declarant's Control and the Association thereafter.

9.2.2 Public Dedication. The Declarant reserves, for itself and its successors and assigns, the right to dedicate all roads, streets, alleys, open space, rights of way or easements shown on the Plat Map to public use. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Unit or Units in the Project except as set forth in this Declaration, or as shown on the Plat Map.

9.2.3 Current Utility Easements. The Association and public utility or public service providers shall have an easement for the installation, maintenance, and repair of such utilities and services as shown on the Plat Map. Except for equipment or

improvements for which the public utility or public service provider is responsible, each Owner shall maintain the portion of such Owner's Unit burdened by a utility easement.

9.2.4 Future Utility Easements. Declarant reserves, for itself and its successors and assigns, an easement, and the right to grant easements to any person, individual, corporate body, or municipality, across, over, under, upon, and through any Unit, Common Area, Limited Common Area, road, street, open space, or other portion of the Project, for the installation, construction, maintenance, reconstruction and repair of public, quasi-public, or private utilities to serve the Project and the Units therein, including but not limited to the mains, conduits, pipelines, underground or above-ground lines and cables, transmission facilities, meters and other facilities and appurtenances necessary or useful for the provision of water, storm sewer, sanitary sewer, gas, electricity, telephone, cable television, internet and data and other public, quasi-public or private services or utilities deemed by Declarant necessary or advisable to provide any service to the Project or any Unit, Common Area, Limited Common Area, or other portion thereof.

9.2.5 Grading. Declarant reserves, for itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Unit and grade a portion of such Unit adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any Residence built on such Unit, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

9.2.6 Right of Entry onto Units. The Declarant during the Period of Declarant's Control and the Association thereafter shall have the right, through authorized agents, to enter onto any Unit after reasonable notice to the Owner thereof for the purpose of performing maintenance or determining whether the Unit, or any Improvements thereon, complies with this Declaration, the Bylaws, and the Rules and Regulations. Except in the event of an emergency, entry made pursuant to this Section shall be during normal business hours, at a time convenient for the Owner, after reasonable notice.

9.2.7 Right of Entry onto Common Areas. Declarant during the Period of Declarant's Control and the Association thereafter shall have the right, through authorized agents, to enter upon the Common Areas for maintenance, repair, replacement, and such other purposes as Declarant deems necessary, including the right to make openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and the right to make such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

## **ARTICLE 10 – DECLARANT RIGHTS AND CONTROL**

10.1 Declarant's Administrative Control. During the Period of Declarant's Control, neither the Board nor the Association shall take any action without Declarant's prior written approval.

10.2 Construction Activities. So long as Declarant owns at least one (1) Unit within the Project, Declarant shall have the right to conduct construction activities on or related to such Unit and shall not be bound by any limitations related to construction activities set forth in this Declaration. During the Period of Declarant's Control, Declarant shall have a non-exclusive easement and right-of-way in, through, under, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services and other services or facilities to the Project. Notwithstanding any other provision of this Declaration to the contrary, Declarant, in its absolute discretion, shall have the right to construct and install any and all Improvements within the Project which Declarant desires, so long as they comply with the applicable ordinances of the City, but this provision shall not be construed to impose any obligations on Declarant to construct any such Improvements.

10.3 Sales Activities. Notwithstanding any other provision of this Declaration, so long as Declarant owns at least one (1) Unit within the Project, Declarant shall have the right to conduct reasonable sales activities including, but not limited to maintaining one or more sales office or model home on Units owned by the Declarant and using the same for business purposes and maintaining a reasonable number of "for sale" signs or other similar marketing materials in the Project, including Common Areas.

10.4 Declarant's Rights Assignable. Declarant may assign the rights of Declarant set forth under this Declaration, or those rights in any way relating to the Property. Upon such assignment, such assignee shall be deemed the Declarant for all purposes under this Declaration.

## ARTICLE 11 – INSURANCE

11.1 Insurance Held by Owner. Each Owner shall obtain and maintain insurance covering the personal contents of the Residence or other Improvements on such Owner's Unit. Each Owner shall also maintain a policy of homeowner's insurance on the Residence on such Owner's Unit, protecting such Residence against casualty and loss, in an amount not less than 100% of the current replacement value of such Residence.

11.2 Insurance Held by Association. The Association shall obtain and maintain all insurance policies required by Part 4 of the Act consistent with the terms and conditions of the Act. All premiums for insurance policies held by the Association shall be funded by Assessments. Without limiting the foregoing, the Association shall obtain and maintain:

11.2.1 Property and liability insurance for all Common Areas.

11.2.2 Such other insurance policies for casualty or liability as the Board deems necessary or desirable.

11.3 Deductible. The deductible on any claim made under a policy maintained by the Association shall be allocated among all Owners if the loss affects the Common Areas or all the Units in the Project. If the loss affects or impacts less than all the Units in the Project, the deductible shall be allocated among the Owners of affected Units.

## **ARTICLE 12 – DURATION AND AMENDMENT**

12.1 Duration. This Declaration shall be effective, and the Covenants set forth herein shall encumber the Property, from the date the Declaration is recorded in Davis County and, as amended from time to time, this Declaration shall continue in full force and effect against the Property and the Covenants shall run with the land in perpetuity, for as long as the law allows unless amended or terminated as provided herein.

12.2 Amendment. During the Period of Declarant's Control, the Declarant shall have the right to amend this Declaration without the consent of any other Owner. Any other amendment proposed during the Period of Declarant's Control must be approved by sixty-seven percent (67%) of the Members of the Association and must also be approved by the Declarant in writing before it can be effective. After the Period of Declarant's Control, this Declaration may be amended by the affirmative vote of not less than sixty-seven percent (67%) of the Members of the Association and such amendment must contain a statement from the Board certifying that the required vote has taken place. No amendment to this Declaration shall be effective until it is recorded in the real property records of Davis County.

12.3 Termination. An agreement to terminate this Declaration and the Covenants set forth herein, shall require same approval required for an amendment as set forth in Section 12.2, above. In addition, after the Period of Declarant's Control any agreement to terminate must be approved, or deemed approved, by at least sixty-seven percent (67%) of the Eligible Mortgagees as provided in Section 14.3, below.

## **ARTICLE 13 – MANDATORY DISPUTE RESOLUTION REQUIREMENTS AND DECLARANT'S REPURCHASE OPTION**

13.1 Statement of Intent. Prior to purchasing a Unit, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Unit that Owner is purchasing or any other aspect of the Project, including, without limitation, the Common Areas. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect



prior to purchasing a Unit, having received a written warranty if any warranty is provided, and having paid market price for a Unit in the condition it and the Units and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Units for years, unfairly prejudicing those Owners who must or want to sell their Unit during any period when litigation is pending. For this reason, the Owners, by purchasing a Unit, and the Declarant covenant and agree that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners, as set forth in the provisions of this Article 13. In addition, the Association and the Owners agree that they take ownership and possession of the Units and Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

13.2 Binding Arbitration for All Disputes. To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer or contractor involved in the design or construction of the Project, which arise from or are in any way related to a Residence or other Improvement on a Unit, Common Areas, Limited Common Areas or any other Improvement on or component of the Project (a “**Dispute**”), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant and any Owner or between or involving the Declarant and the Association. Arbitration proceedings, however, shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 13.3 below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include the following:

13.2.1 Any allegation that a condition in any of the Residences on the Units, the Common Areas, the Limited Common Areas, or other Improvements in the Project is or involves a construction defect;

13.2.2 Any disagreement as to whether an alleged construction defect has been corrected;

13.2.3 Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;

13.2.4 Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;

13.2.5 Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;

13.2.6 Any alleged violations of consumer protection, unfair trade practice, or other statutes or laws;

13.2.7 Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;

13.2.8 Any allegation that any condition existing in the Project or created by the Declarant (or any of its contractors), including construction-related noise, dust, and traffic, is a nuisance, a defect, or a breach of any implied warranties of habitability or other implied warranties;

13.2.9 Any disagreement concerning the scope of issues or claims that should be submitted to binding arbitration;

13.2.10 Any disagreement concerning the timeliness of performance of any act to be performed by Declarant or any of its contractors;

13.2.11 Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;

13.2.12 Any disagreement or dispute regarding management of the Association, or regarding reserve studies or funding of Association expenses; and

13.2.13 Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of Improvement on the Units, Common Areas, Limited Common Areas, off-site improvements, management of the Association, or other claims regarding the Project.

13.3 Pre-Arbitration Requirements. An Owner or the Association may only pursue a claim against the Declarant in arbitration after all of the following efforts of dispute resolution have been completed: (1) Right to Cure: the claimant (e.g. the Owner or the Association) shall

provide to the Declarant a written Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; (2) if the dispute is not resolved within the 180-day Right to Cure period, the parties shall participate in formal mediation with a mutually-acceptable third-party mediator in an effort to resolve the Dispute prior to taking further action. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this Section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.

13.3.1 "Notice of Claim" shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged defective condition, if applicable, (5) samples of any alleged defective conditions or materials, if reasonably available, (6) an explanation of the efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

13.4 Member Approval; Legal Opinion; Arbitration. If a claim or dispute has not been resolved after satisfying and complying with the above-described "Pre-Arbitration Requirements," then the claimant (Owner or Association) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the total votes of the Association after the Association has obtained a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a mutually-acceptable arbitrator (preferably a former judge), or, if an arbitrator cannot be mutually selected, then by a member of the American Arbitration Association's Panel of Construction Arbitrators appointed by the American Arbitration Association ("AAA"). The binding arbitration shall be conducted according to the rules and procedures set forth in the Construction Industry Arbitration Rules promulgated by the AAA. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

13.5 Fees and Costs of Arbitration. Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. Notwithstanding the foregoing, the arbitrator shall, as part of any decision, award to the prevailing party any applicable filing fees or other arbitration fees paid by that party.

13.6 No Waiver of Arbitration Right. If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration or to insist on compliance with the requirements set forth in this Article 13. If any such court action is filed, then the court in such action shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein, including, without limitation, compliance with the pre-arbitration requirements set forth above.

13.7 Waiver of Subrogation. The Association and each Owner waives any and all rights to subrogation against the Declarant and any builder, contractor, and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the Project engineer, and builder, contractors of the Declarant and the builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and builder, and their respective officers, employees, owners, contractors, insurers, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, and any of their officers, employees, owners, contractors, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

13.8 Repurchase Option for Construction Defect Claims. In the event an Owner, group of Owners, or the Association shall assert a claim or commence an arbitration proceeding or other legal action against Declarant or any contractor in connection with an alleged construction defect in any Improvement in or on any Unit or Units in the Project – which proceeding may

only be filed and maintained by an Owner, group of Owners, or the Association after strict compliance with the notice and other provisions of this Article 13 – Declarant (or any assignee of Declarant) shall have the option, but not the obligation, to purchase such Unit or Units and all Improvements thereon subject to the following terms and conditions.

13.8.1 The purchase price for any Unit shall be an amount equal to the sum of the following less any sums paid to an affected Owner under any construction warranty in connection with the alleged defect:

13.8.1.1 The original price paid by the original Owner to purchase the Unit from the Declarant;

13.8.1.2 The value of any Improvements to the Unit made by the Owner as evidenced by invoices or receipts;

13.8.1.3 The Owner's reasonable moving costs; and

13.8.1.4 Any closing costs incurred by the Owner in connection with the Owner's purchase of another Unit within ninety (90) days after closing of the repurchase of the Owner's Unit by Declarant.

13.8.2 The close of escrow with respect to Declarant's repurchase of a Unit shall occur no later than forty-five (45) days after written notice from Declarant to Owner of Declarant's intent to exercise the repurchase option.

13.8.3 Title to the Unit shall be conveyed by Owner to Declarant free and clear of all monetary liens and encumbrances other than non-delinquent property taxes and other encumbrances shown on a preliminary title report approved by Owner.

13.8.4 Declarant shall pay all closing costs associated with the repurchase of the Unit.

13.8.5 By exercising the repurchase option, Declarant shall be conclusively deemed to have satisfied in full all claims of any nature Owner has against Declarant relating to the Unit, any Improvements on the Unit, or Owner's purchase and occupation of the Unit. Following repurchase, the Owner shall promptly execute and deliver a notice of dismissal with prejudice or other document necessary to evidence such satisfaction.

#### **ARTICLE 14 – MISCELLANEOUS PROVISIONS**

14.1 Damage or Destruction.

14.1.1 Attorney in Fact. Each Owner irrevocably appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place and stead for the purpose of dealing with the Project in the event of damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association, except as otherwise provided in this Declaration.

14.1.2 Definition of Repair and Reconstruction. Repair and reconstruction of the Improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

14.1.3 Procedure. In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows. The Association shall give timely written notice to any First Mortgagee on a Unit or who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or a Unit subject to the Mortgage held by such First Mortgagee. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed. In no event shall an Owner of a Unit or any other party have priority over the First Mortgagee on such Unit with respect to the distribution to such Unit of any insurance proceeds.

14.1.4 Repair or Reconstruction. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein.

14.1.5 Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association, and any

amounts received from assessments made shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally.

#### 14.2 Condemnation.

14.2.1 In General. If at any time, or from time to time, all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Section shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof, or the Common Areas or Limited Common Areas or any portion thereof, are made the subject matter of any condemnation or eminent domain proceeding, or are otherwise sought to be acquired by a condemning authority, the Board shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

14.2.2 Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "**Condemnation Award**") shall be made payable to the Association and shall be distributed by the Board, on behalf of the Association as herein provided.

14.2.3 Complete Taking. In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Units immediately prior to the condemnation. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

14.2.4 Partial Taking. In the event that less than the entire Project is taken by power of eminent domain, the following shall occur:

14.2.4.1 Allocation of Condemnation Award. As soon as practicable, the Board shall, on behalf of the Association, reasonably and in good

faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amount and pay the same to the Owners as follows: (a) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken); (b) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Units that have not been taken; (c) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit; (d) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances; (e) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable; (f) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and (g) No provision of this Section, or any other provision of this Declaration, the Association's Articles of Incorporation or the Bylaws shall entitle the Owner of a Unit, or other party, to priority over any First Mortgagee of such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceedings.

14.2.4.2 Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows: (a) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a Member of the Association and all voting rights shall terminate; (b) If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue; (c) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit, then all voting rights shall terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas; (d) The Board, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section (including a possible reallocation of voting rights); provided, however, that if any such determination shall have been or such



action is taken by judicial decree, the Board shall defer thereto and proceed in accordance therewith.

14.2.4.3 Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Section 14.1 for cases of Damage or Destruction, as applicable.

### 14.3 Mortgagee Protection.

14.3.1 Notice of Action. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage (any one of which is an “**Eligible Mortgagee**”), which written request shall identify the name and mailing address of such First Mortgagee, insurer, or governmental guarantor and the Unit number or physical address of the Residence, any such First Mortgage, insurer or governmental guarantor shall be entitled to timely written notice of: (a) Any condemnation, loss or any casualty loss which affects a material portion of the Project, or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor; (b) Any delinquency in the payment of assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 14.3.2 or elsewhere herein.

14.3.2 Matters Requiring Mortgagee Approval. After the Period of Declarant’s Control, and except as otherwise provided in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Units in the Association, and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to: (a) Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs; (b) Add or amend any material provision of the Declaration, Articles of Incorporation, Bylaws or Plat Map, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only): the conversion of Units into Common Areas or vice versa, a material change to hazard or fidelity insurance requirements, the imposition of any restrictions on Owner’s right to sell or transfer his Unit, the establishment of self-management by the Association if professional management had been required previously by the Declaration or by an Eligible

Mortgagee, or a change to or deletion of any provision that expressly benefits Mortgagees, insurers, or guarantors.

14.3.3 Response. Any Eligible Mortgagee who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within sixty (60) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

14.3.4 Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Declaration, Articles of Incorporation, Bylaws, and Rules and Regulations as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours. The Association shall make an audited financial statement for the preceding fiscal year (if the Project has been established for a full fiscal year) available to the holder, insurer, or guarantor of any First Mortgage on submission of a written request for it. The audited financial statement shall be made available within 120 days of the Association's fiscal year-end.

14.3.5 Subordination of Lien. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or which obtain title, shall be collected or enforced by the Association from or against a First Mortgagee or the Unit affected or previously affected by the First Mortgage concerned.

14.3.6 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in this Declaration lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance.

Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefore from the Association.

14.3.7 Priority. No provision of this Declaration gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas.

14.4 Notices. The Association shall keep a list of contact information for Owners of all Units within the Project and all Eligible Mortgagees. Each Owner, upon becoming an Owner, shall provide the Association with appropriate contact information including mailing address, telephone number, and email address. Each Owner or Eligible Mortgagee shall update the Association with any changes to contact information. Where written notice to an Owner is required under this Declaration, the Bylaws, or the Rules and Regulations, such notice will be deemed sufficient if it is sent to the mailing address or email address on file with the Association.

14.5 Interpretation. The captions and section headings set forth in this Declaration are for convenience and shall affect the provisions set forth in the sections hereof. The use of any plural shall, where the context requires, include the singular thereof, and vice-versa.

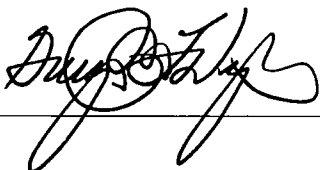
14.6 Governing Law. This Declaration shall be govern by, and interpreted in accordance with, the laws of the State of Utah.

14.7 Severability. If any section, term, or provision of this Declaration is determined to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining sections, terms, and provisions of this Declaration, which shall all remain in full force and effect.

14.8 Waiver. The failure by the Declarant, the Association, or any Owner to enforce any term or provision of this Declaration shall not be deemed as a waiver of the right to thereafter enforce such term or provision.

IN WITNESS WHEREOF, Declarant has executed this Declaration on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**DECLARANT**  
GMW Development, Inc.

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

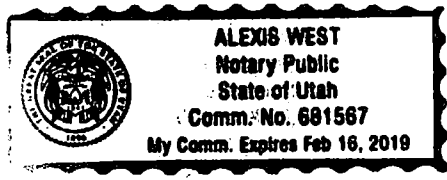
Name: Gary M. Wright  
Title: President

STATE OF UTAH )

SS.

COUNTY OF Davis )

The foregoing instrument was acknowledged before me this 19 day of August,  
2015 by Gary M. Wright as the president of GMW Development, Inc.



Alexis West  
Notary Public

**EXHIBIT A**

**(Property Description)**

**BOUNDARY DESCRIPTION**

A portion of the NE1/4 of Section 15, Township 4 North, Range 2 West, Salt Lake Base & Meridian, located in West Valley City, Utah, more particularly described as follows:

Beginning at a point located S0°08'46"W along the Section line 659.54 feet from the Northeast Corner of Section 15, T4N, R2W, S.L.B.& M.; thence S0°08'46"W along the Section line 659.51 feet; thence S89°58'02"W 1,328.30 feet along the south line of the north half of the NE1/4 of said Section 15 to the southeast corner of ANTELOPE RUN Subdivision according to the Official Plat thereof on file in the Office of the Davis County Recorder; thence N0°07'52"E along said Plat 330.50 feet; thence S89°52'08"E 100.00 feet; thence S0°07'52"W 85.28 feet; thence S89°52'08"E 260.00 feet; thence N80°40'08"E 60.83 feet; thence S89°52'08"E 110.00 feet; thence N0°07'52"E 83.97 feet; thence N66°04'41"E 87.61 feet; thence N72°34'08"E 83.91 feet; thence S89°49'03"E 166.00 feet; thence N89°59'20"E 60.00 feet; thence S89°52'08"E 379.39 feet; thence N0°08'46"E 263.00 feet; thence N89°58'36"E 33.00 feet to the point of beginning.

Contains: 10.58+/- acres

