


AFTER RECORDING RETURN TO:
Joseph Walker
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Orem, Utah 84097



ENT 3439:2012 PG 1 of 49
JEFFERY SMITH
UTAH COUNTY RECORDER
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RECORDED FOR DAVINCI PLACE SUBD HOA

**FOURTH AMENDMENT AND 2012 TOTAL RESTATEMENT OF THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR DA VINCI PLACE SUBDIVISION**

A Planned Residential Development and Age Restricted Community

This Fourth Amendment and 2012 Total Restatement of the Declaration of Covenants, Conditions and Restrictions for Da Vinci Place Subdivision (herein sometimes referred to as the "Subdivision"), located in Orem, Utah County, Utah, is made and executed, on behalf of all the Members of Da Vinci Place Homeowners Association, Inc., a Utah nonprofit corporation (herein sometimes referred to as the "Association"), by the undersigned Board of Directors of said corporation, namely: Joseph Walker (who is also the President); Shirley Myers (who is also the Vice President); and Burton Butterfield (who is also the Secretary/Treasurer).

RECITALS

A. The Developer of the Subdivision, IVORY DEVELOPMENT, L.L.C. (herein sometimes referred to as the "Developer"), arranged for Orem City to record the current Plat "A" Amended for the Subdivision, which included a vacation of the Developer's original Plat "A" for the Subdivision, with the Utah County Recorder, on August 11, 2005, as Entry No 88172:2005. A copy of the Boundary Description from said Plat "A" Amended is attached hereto as Exhibit "A".

B. The Developer recorded the original Declaration of Covenants, Conditions and Restrictions for the Subdivision with the Utah County Recorder on October 28, 2005, as Entry No. 123594:2005 at Pages 1-64, which document included By-Laws intended for the Association as an Exhibit thereto (herein "Declaration").

C. The Developer recorded a First Amendment to the Declaration on January 27, 2006 as Entry No. 10699:2006 at Pages 1-10 of the Official Records of the County Recorder of Utah County, Utah ("First Amendment"), which changed the scope of the development to a Planned Residential Development and Age Restricted Community.

D. The Developer recorded a Second Amendment to the Declaration on October 17, 2006, as Entry No. 138087:2006 at Pages 1-5 of the Official Records of the County Recorder of Utah County, Utah ("Second Amendment").

E. The Developer recorded Articles of Incorporation for the Association, being a nonprofit Utah corporation, with the Utah Divisions of Corporation and Commercial Code on May 17, 2007, for the purposes set forth therein, including a provision for all Lot Owners in the Subdivision to be the members of the Association. Said Association was organized in order to efficiently manage and to preserve the value and appearance of the Subdivision and to maintain its Common Areas; to

collect assessments and disburse funds as hereinafter set forth; and to perform such other acts as shall generally benefit the Subdivision and the Members.

F. The Developer recorded a Third Amendment to the Declaration on July 6, 2011 as Entry No. 48583:2011 at Pages 1-4 of the Official Records of the County Recorder of Utah County, Utah ("Third Amendment"). The undersigned President recorded a Correction Affidavit related to said Third Amendment on August 10, 2011 as Entry No 56566:2011 at Pages 1-3 of the Official Records of the County Recorder of Utah County, Utah ("Correction Affidavit").

G. The Developer, having completed and sold all the lots in the Subdivision, pursuant to the Declaration, arranged for its agents who were serving as Directors of the Association to send notices of a meeting of the Members for the purpose of electing new Directors of the Association, which was held on April 26, 2011. At such meeting, the undersigned Directors were duly elected as the new Board of the Directors of the Association (herein "Directors").

H. The undersigned Directors have obtained the approval of more than 2/3 of the Members to amend the Declaration so that there will be a single document which incorporates all documents on file to date, including all amendments made herein.

I. This Fourth Amendment and 2012 Total Restatement does the following: (a) removes from prior documents all reference to items which are no longer necessary or never applied to the project; (b) eliminates the clause "Transfer Fee" cited in the Second Amendment page 4; (c) amends 6.4 (d) herein as to snow removal duties of the Association; (d) transfers certain provisions related to Association governance from the Declaration to the By-Laws as explained herein; (e) incorporates all remaining provisions into a single document, including copies of Association Articles of Incorporation and current By-Laws; and (f) reorganizes and adds appropriate headings and ARTICLE and Section numbers which will make the document more readable to the Members and other interested parties.

AFFIRMATION OF DECLARATION SUBMISSION, AMENDMENTS AND ASSOCIATION ORGANIZATION

On behalf of all the Members, the undersigned Directors hereby affirm all currently applicable provisions of the original Declaration, as amended to date, and confirm the following:

1. That the individual lots in the Subdivision shall be held, sold, conveyed, leased, rented, encumbered and used subject to the easements, rights, assessments, liens, charges, covenants, servitudes, restrictions, limitations, conditions and uses set forth in the Declaration, as amended to date, which are for the purpose of protecting the value and desirability of, and which shall run with, the Subdivision, and shall be binding on all parties having any right, title or interest in the described Subdivision or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

2. That all of the lots in the Subdivision are subject to: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the Subdivision or any portion thereof, including, without

limitation, any mortgage or deed or trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the plat maps or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Subdivision and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

3. That the Subdivision will be operated to provide housing opportunities primarily for persons age 55 and older in accordance with 42 U.S.C. Section 3602(k), subject to the following provisions:

a) Age Restriction. At least 80% of the occupied homes must be occupied by at least one person 55 years of age or older.

b) Policies and Procedures. The Association of Homeowners will publish and adhere to policies and procedures that demonstrate an intent to provide housing for age qualified persons, such as written rules, regulations, lease provisions, deed restrictions, advertising, actual practices, and so forth.

c) Verification of Occupancy. The Subdivision will comply with rules issued by the Secretary of Housing and Urban Development for verification of occupancy through reliable surveys and affidavits. Owners and occupants shall be required to cooperate in providing age verification. The Subdivision will re-survey its list of resident at least once every two years to ensure that the 80% requirement is met.

d) Exceptions. The following homes may be excluded from the calculation of the 80% requirement:

(1) Unoccupied homes.

(2) Homes occupied solely by persons who are necessary or essential to provide medical and/or health and nursing care services as a reasonable accommodation to residents.

4. That after careful review of all documents provided by the Developer related to the Subdivision and the organization of the Association, it is noted that the governing Board for the Association (the "HOA Board") is referred to in the Articles of Incorporation as the Board of Directors whereas the Declaration refers to the Management Committee. In order to avoid confusion in the future, provisions in the Declaration, as amended which refer to the Management Committee, have been moved from the Declaration to the By-Laws, and all references hereafter to the HOA Board, shall be to the Board of Directors of the Association, and not to the Management Committee. The By-Laws have been approved as changed by the current HOA Board on the date hereof.

NOW THEREFORE, for the reasons recited above, and subject to the covenants, conditions and restrictions set forth below, the Association Board of Directors hereby makes the following Fourth Amendment and 2012 Total Restatement of the Declaration (herein "2012 Declaration"):

I. DEFINITIONS

When used in this 2012 Declaration (including in those portions hereof entitled "Recitals" and "Affirmation of Declaration Submission, Amendments and Association Organization"), each of the following terms shall have the meaning indicated:

1.1 Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, service fees, filing and recordation fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association.

1.2 Age Qualified Occupant shall mean and refer to any Person 55 years of age or older who occupies a Dwelling Unit.

1.3 Age Restricted Community shall mean and refer to a development in compliance with code 42 U.S.C., Section 3602(k) and all applicable state and federal housing laws.

1.4 Age Restriction shall mean and refer to the requirement that this Subdivision is intended to provide housing primarily for persons 55 years of age or older and shall be operated as an Age Restricted Community.

1.5 Articles of Incorporation shall mean and refer to the Articles of Incorporation of the DaVinci Place Homeowners Association, Inc., on file with the State of Utah.

1.6 Assessments shall mean and refer to the fees, dues and amounts assessed Lot Owners to pay for the Common Expenses incurred in the operation, maintenance and regulation of the Subdivision.

1.7 Association shall mean and refer to the association of Lot Owners at DaVinci Place Subdivision, acting as a group in accordance with the Declaration and the governing documents of the Association.

1.8 Board, HOA shall mean and refer to the Board of Directors of the Association, those Lot Owners duly elected and qualified to manage, operate and regulate the Association.

1.9 Building shall mean and refer to any of the structures constructed in the Subdivision.

1.10 Business and Trade shall be construed to have their ordinary and generally accepted meanings, which shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate, a profit; or (c) a license is required therefore. Anything to the contrary notwithstanding, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-section.

1.11 By-Laws shall mean and refer to a separate document approved by the HOA Board on the date hereof.

1.12 Capital Improvement shall mean and refer to a new significant fixed asset added to the Subdivision, and not included in its original design or construction, intended to enhance, upgrade and improve the utility, value or beauty of the Common Areas or Facilities. The term Capital Improvement does not include the repair, maintenance or replacement of existing significant fixed assets.

1.13 Capital Improvement Expenses shall mean and refer to all expenses related to the design, purchase, installation or construction of a Capital Improvement.

1.14 City shall mean and refer to Orem City.

1.15 Committee (ARC) shall mean and refer to the Architectural Review Committee.

1.16 Common Areas shall mean and refer to all real property in the Subdivision in which the Association owns an interest for the common use and benefit of its Members, their successors, assigns, tenants, families, guests and invitees, including but not limited to the following items:

a) The real property and interests in real property located in the Subdivision, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Lots;

b) All Common Areas and Facilities designated as such in the Plat Map or Maps;

c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Subdivision and intended for the common use of all Lot Owners, such as telephone, cable, electricity, street lights, gas, water, and sewer;

d) The Subdivision's outdoor grounds, Tennis Court, Pavilion and related amenities, frontage on 1200 North Street, frontage on Research Way, green space, landscaping, sidewalks and entry;

e) All portions of the Subdivision not dedicated to the City or specifically included within the individual Lots; and

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

1.17 Common Expense shall mean and refer to:

- a) All sums lawfully assessed against the Lot Owners;
- b) Expenses of administration, maintenance, repair, or replacement of the Common Areas and Facilities;
- c) Expenses agreed upon as common expenses by the Association; and
- d) Expenses declared common expenses by the Declaration, as amended.

1.18 Community shall mean and refer to the Subdivision.

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

1.20 Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of DaVinci Place Subdivision, as amended, and referred to herein as 2012 Declaration.

1.21 Declarant shall mean and refer to Ivory Development, LLC, a Utah Limited Liability Corporation, and its successors and assigns, unless otherwise indicated.

1.22 Dedicated Streets shall mean and refer to those streets formally dedicated to the City.

1.23 Developer shall mean and refer to Ivory Development, L.L.C.

1.24 Dwelling Unit or Unit shall mean and refer to the single family home or residential structure constructed upon a Lot.

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

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

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

1.28 Family shall mean one of the following: (1) a single person living alone; or (2) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, such as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent or great-grandchild, and an additional person as domestic help or a caretaker; or (3) a group of not more than three unrelated persons who live together, cook together, and maintain a common household and single housekeeping unit, to be distinguished from a group occupying a boarding house, lodging house, club, fraternity, or hotel.

1.29 Final Plat shall mean and refer to the "Plat Map or Maps of DaVinci Place Subdivision" on file in the office of the County Recorder of Utah County, as they may be amended from time to time. The Plat Map will show the location of the Lots and Common Areas.

1.30 Guest shall mean and refer to a temporary visitor, invitee or person whose presence within the Subdivision is approved by or is present at the request of a particular Lot owner or other approved resident.

1.31 Improvement shall mean and refer to all existing physical structures and appurtenances to the Property of every kind and type, including but not limited to all buildings, dwelling units, fixtures, plumbing, electrical, heating, air conditioning and utility systems, roads, walkways, driveways, parking areas, fences, walls, stairs, landscaping, trees, shrubs, bushes and green space.

1.32 Land shall mean and refer to all of the real property subject to this Declaration.

1.33 Lot shall mean and refer to a portion of the Property, other than the Common Area, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plat Map filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any dwelling unit, physical structure or improvement constructed on the Lot.

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

1.35 Lot Owner shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Utah County, Utah) of a fee or an undivided fee interest in a Lot, including but not limited to both the seller and buyer under an executory sales contract (e.g. uniform real estate, land sales contract, or other similar instrument). The term Lot Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.36 Majority shall mean and refer to Lot Owners totaling more than fifty percent (50%) of the Lot Owners eligible to vote on a matter.

1.37 Management Committee shall not be used hereafter, since the governing board will be known as the HOA Board.

1.38 Manager shall mean and refer to the person or entity appointed or hired to manage and operate the Subdivision.

1.39 Map shall mean and refer to the Plat Map on file in the office of the County Recorder of Utah County, as amended.

1.40 Member shall mean and refer to an Owner obligated, by virtue of his Ownership, to be a member of the Association.

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

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

1.43 Owner shall mean and refer to the Lot Owner.

1.44 Owner-Occupied shall mean a Unit occupied by one of the following:

- a) The vested owner (as shown on the records of the Utah County Recorder);
- b) The vested owner and/or his spouse, children or siblings; or
- c) The shareholder, partner, member, trustee, beneficiary or other legal representative of an institutional owner (provided, such person holds a beneficial interest in such legal entity of at least 50.0%) and/or his spouse, children or parents.

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

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

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

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

1.49 Single Family Home or Residence shall mean and refer to both the architectural style of a Dwelling Unit and the nature of the residential occupancy, use or activity permitted.

1.50 Subdivision shall mean and refer to DaVinci Place.

1.51 Subdivision Documents shall mean collectively the Declaration as amended, and the Association Articles of Incorporation, By-Laws and Rules and Regulations.

1.52 Total Votes shall mean and refer to all of the eligible votes of the members of the Association.

II. MEMBERS AND VOTING

2.1 Membership in the Association. Membership in the Association is mandatory, appurtenant to the ownership of a Lot, and may not be partitioned therefrom.

2.2 Classes of Membership and Voting Allocations. The Association shall have only one class of membership -- Class A. Class A Members shall be all Owners. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

- a) One Vote. Each Lot shall have one (1) vote;
- b) Subject To Assessment. No vote shall be cast or counted for any Lot not subject to assessment;
- c) Multiple Owners. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.
- d) Leased Lot. Any Owner of a Lot which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

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

- a) Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and
- b) Change In Ownership. Any change in Ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

III. ASSOCIATION

3.1 Formation of Association. The Association is a Utah nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in its Articles of Incorporation and By-Laws, and the Declaration. Neither the Articles nor By-Laws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with the Declaration.

3.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board of Directors and such officers as the HOA Board may elect or appoint in accordance with the Articles and By-Laws of the Association as the same may be amended from time to time. After April 26, 2011, the HOA Board shall be composed of three (3) natural persons, who shall be Members of the Association (Lot Owners). The Board of Directors may also appoint various committees to provide service under the direction of the HOA Board. (**Note:** For a complete description of the duties and responsibilities of the duly elected HOA Board see the Association By-Laws, previously referenced herein).

3.3 No Compensation. Neither the HOA Board members nor any officer or appointed committee members shall be compensated for their services, but shall be reimbursed for all expenses reasonably incurred in connection with HOA Board business and approved by the HOA Board. (See Association By-Laws.)

3.4 Registered Agent and Office. The Registered Agent and Office shall be the professional manager engaged by the Association and its office address.

IV. COVENANTS, CONDITIONS, AND RESTRICTIONS

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

4.1 Area of Application. This Declaration shall apply to all of the Property.

4.2 Right to Expand Application. Without any other additional approval required, the Association shall have the exclusive, unilateral, unconditional, and irrevocable right to expand the application of this Declaration to other real property by written amendment to this Declaration duly recorded.

4.3 Description of Improvements. The significant improvements in the Subdivision include forty-five (45) Lots and Common Area consisting of certain common grounds, green space and landscaping; Tennis Court and related amenities; Pavilion; frontage on 1200 North Street and frontage on Research Way; sidewalks; utility systems; and Entries and Entry Monument. The Entry Monument shall be constructed of Rock, Wrought Iron, and Concrete. The common fencing on the exterior is a Masonry Wall and the interior fencing throughout the Subdivision shall be Vinyl construction. The Subdivision will also contain other improvements of a less significant nature.

4.4 Description and Legal Status of the Property. The Lots shall be individually owned and the Common Areas shall be owned by the Association.

4.5 Owner-Occupied. In order to maintain the value of the purchased property and subdivision, a Dwelling Unit must be owner-occupied for a period of at least one (1) year after closing. (See definitions)

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

All of Lot No. _____ contained within DaVinci Place Subdivision, a planned residential development, Phase _____, as the same is identified in the Final Plat recorded in Utah County, Utah as Entry No. _____ at Pages _____ (as said Final Plat may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions and Restrictions for DaVinci Place Subdivision, a planned residential development, (as said Declaration may have heretofore been amended or supplemented), together with an undivided membership in and to the association of lot owners. Occupancy in each dwelling unit is restricted to at least one person 55 years of age or older.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration, as amended, shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Neither the membership in the Association, nor the right of non-exclusive use of a Common Area shall be separated from the Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the association and such right of exclusive use shall automatically accompany the transfer of the Lot to which they relate.

a) Marketing or Re-Sales. The Homeowner must before advertising inquire the status of the 20% portion of the homes not required to be occupied by at least one age qualified person to prospective buyers under age 55 and to families with children, but the marketing must be done in a way that identifies DaVinci Place Subdivision as housing intended for older persons, Advertising and marketing must be consistent with the intent. In order to not risk losing the exemption if some occupants over 55 die with survivors or heirs who are under age 55, re-sales and leased homes in DaVinci Place Subdivision are restricted to occupancy by at least one age qualified person.

b) Temporary Absences. If an age qualified occupant is on vacation, hospitalized, on sabbatical, providing ecclesiastical, philanthropic, humanitarian or related service, or otherwise absent for a season, the occupant may allow a younger relative or a house sitter under age 55 years to live in the home during this absence and the home would be included in the 80% occupancy requirement as long as the home is not rented out, and the age qualified occupant returns on a periodic basis and maintains legal and financial responsibility for the upkeep of the home.

c) Lease. An Owner may not lease or otherwise grant occupancy rights to his Dwelling Unit, except when in compliance with (a) Orem City Ordinances; and (b) all of the provisions of the Age Restriction that at least 80% of the homes must be occupied by at least one person age 55 or older.

4.7 Ownership and Use. Each Owner shall be entitled to the exclusive ownership and possession of his Lot and to membership in the Association as set forth herein, subject, however, to the following:

a) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Lot, however, this is an Age Restricted Community and, as such, is intended and operated for occupancy by persons age 55 and older. The Lots shall be used for residential purposes and the Common Areas and Facilities shall be used in a manner consistent with the residential nature of the Subdivision and its status as an Age Restricted Community. The Association is granted and hereby expressly reserves the unilateral right to void any re-sale or lease of a Lot or Dwelling Unit in violation of the Age Restrictions by recording a written "Notice of Election to Void Sale or Lease for Violation of Age Restrictions" or its equivalent in the office of the County Recorder of Utah County, Utah.

b) Title to the Common Area. The Common Area, described with particularity in the Final Plat, is granted to and shall be owned by the Association for and in behalf of the Owners.

c) Member's Easements and Rights of Way. Every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions:

(1) The right of the Association to limit the number of Guests and residents;

(2) The right of the Association to suspend the voting privilege and/or right to use the recreational amenities; and

(3) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of regulating transportation, maintaining the roadways or providing utilities and other similar or related purposes.

(4) The right, power and authority to require that at least 80% of the occupied Dwelling Units are occupied by at least one Age Qualified Person.

(5) The right, power and authority to enforce the Age Restriction.

d) Rules and Regulations. The Board of Directors, shall have the power and authority to adopt, amend or repeal rules and regulations, and architectural guidelines, from time to time.

e) Restrictions and Limitations of Use. The use of the Lots is subject to the following initial use restrictions:

(1) Parties Bound. The Subdivision Documents shall be binding upon all Owners and residents, their family members, Guests and invitees.

(2) Nuisance. It shall be the responsibility of each Owner and resident to prevent the creation or maintenance of a nuisance in, on or about the Subdivision, and to promptly abate any nuisance created. For purposes of this section a "nuisance" includes but is not limited to the following:

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

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

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

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

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

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

g. Maintaining a party house as that term is defined in U.C.A., Section 78-38-9, as amended or supplemented from time to time.

(3) Unsightly Work, Hobbies or Unkempt Condition. The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Subdivision.

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

(5) Subdivision of a Lot. No Lot shall be subdivided or partitioned, unless a variance is granted in writing by both the ARC and Board of Directors, by executing and delivering a Quit Claim Deed or other document of conveyance and noting the change by a written supplement to this Declaration duly recorded, in accordance with the applicable state and City regulations, laws, and ordinances regarding the same.

(6) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-buildings shall be used on any Lot at any time as a residence either temporarily or permanently. No tin sheds, mobile homes, pre-fabricated homes, or homes built off the Property are permitted.

(7) Signs. No signs, billboards or advertising structures or devices of any kind may be built, installed or displayed on the Property or any Lot except for a single professional sign with a maximum size of 2' x 2' for specific purpose of advertising the sale of a Dwelling Unit;. "For Rent" or "For Lease" signs in the Common Area, on a Lot, or showing from a Dwelling Unit are strictly prohibited.

(8) Pets, Animals, Livestock and Poultry. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Subdivision. Up to two (2) domestic pets per unit are allowed; provided, however, pets must be properly licensed and registered (if required) with the appropriate governmental agencies, owners may be required to pay a pet deposit to the ARC, obtain a certificate of registration from the ARC, and abide by all local ordinances and pet rules and regulations adopted from time to time. Pets may not create a nuisance. The following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) defecating on any common area when the feces are not immediately cleaned up by the responsible party; (e) barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb other reasonable residents or interfering with their right to the peaceful and quiet enjoyment of their property; or (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents. Pets in the Subdivision and outside of the Lot of their owner must be in a cage or on a leash and under the control of a responsible person.

(9) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, refuse, garbage or other waste, which shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each Lot and its abutting street are to be kept free of rubbish, trash, refuse, garbage, waste, litter, weeds and other similar items by the Owner.

(10) Unsightly Materials and Objects. No unsightly materials, items, objects or things which impair the aesthetics or value or use or utility of the Subdivision are to be stored on any Lot in view of the general public.

(11) Sight Distance at Intersections. A clear vision area is required at each intersection. This area is defined by a triangle created by connecting the intersection of the curb face of each street. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2') and six (6') feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty five feet (25') from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. A 25' sight-line limitation shall apply on a driveway pavement. No tree shall be permitted to remain within such

distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(12) Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

(13) Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Association, except for those improvements for which a public authority or utility company is responsible. No structure may be constructed, placed or installed so as to impair in any way the natural drainage flow or swells established by Developer, nor within ten feet (10') of the rear or side Lot lines. Landscaping and all grading and drainage shall be designed in such a way to control water run-off so that any Lot within the Subdivision will not be adversely affected by another. Furthermore, the grades initially established by the ARC or Developer may not be altered without the prior written consent of the ARC.

(14) Fencing and Gardens. In order to maintain the open nature of the Subdivision and the Developer's original design and architectural scheme, the following fencing restrictions shall apply:

- a. No front fencing is allowed;
- b. No fence or other similar structure shall be erected in any side or rear yard in a height in excess of six (6') feet;
- c. Each Lot, if fenced, shall have at least one gate with an opening of at least forty-three inches (43") so that the lawn care company can access the back yard area with their equipment;
- d. Fencing may not extend beyond the geometric plane established by the rear corner of the house;
- e. Wood fencing is not allowed;
- f. Chain link fencing is not allowed except around tennis court or other sports court;
- g. Tan vinyl fencing is allowed;

h. Anything to the contrary notwithstanding, the Association is granted and hereby reserves the unilateral right to determine the construction material of the perimeter fence;

i. Any fencing or similar structure using other construction materials or colors than those established hereby shall require the prior express written approval of the ARC and ALL fencing plans MUST have the prior written approval of the ARC;

j. The property owner must allow access to every utility located adjacent to the public right of way. These utilities include fire hydrants, water meters, telephone pedestals, power poles, power boxes, cable boxes, irrigation facilities, or any other utility feature;

k. All fencing must be constructed or installed with a minimum three-foot (3') clearance from the outer-most edge of the utility;

l. Fencing on corner Lots shall meet city ordinances regarding vision triangle standards for safety visibility;

m. Vegetable gardens in the rear yard are allowed if they are contained behind a privacy fence and are not visible to the general public or a neighbor;

n. No alterations to the landscaping in the front or side yards is allowed, including trees, bushes, shrubs and plant or flower beds; and

o. If there is a dispute as to gardens, landscaping, fencing or what constitutes visible to the public or other residents, the front, side or rear yards, including the location of the geometric plane established by the rear of the house, the decision of the ARC shall be final, binding and conclusive.

(15) Parking and Storage of Motor Vehicles. All motor vehicles driven on or transported into the Subdivision shall be subject to Parking Rules and Regulations adopted by the Board of Directors, and the following initial restrictions:

a. No damaged (in excess of \$1,000.00) or inoperative motor vehicle or transportation device of any kind shall be placed or remain on any Lot or adjacent street for more than forty-eight (48) hours.

b. No Recreational, Oversized, or Commercial type vehicles and no tractor-trailer trucks may be parked in the Subdivision.

c. No yard pads designed for the storage of Recreational, Commercial or Oversized vehicles, tractor-trailer trucks or other materials either temporarily or permanently may be constructed, installed or used in the Subdivision.

d. No motor vehicle or any other transportation device of any kind may be parked or stationed in a fire lane or in a red zone, in an unsafe or dangerous manner, or so as to obstruct or block access to any Lot, driveway, street, or other transportation device.

e. No Owner or resident may repair, change the oil or other fluids of, or restore any motor vehicle of any kind in, on or about any Lot or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

f. Overnight parking on the street is not allowed within the DaVinci Place Subdivision. Vehicles of owners and/or residents and all guests are to be parked in the Owner's garage or driveway during the overnight hours.

g. The parking area by the tennis court is designated as a Common Area. This parking area is for the vehicles of those who are playing on the tennis court and for temporary daytime and overnight guests of all Owners. Owners and residents are to park their vehicles in their garages and their own driveways. Prior written permission is needed for any exception to this policy.

(16) Pools, Spas, and Game Courts. Pools, spas, and game courts shall be located so as to avoid unreasonably impacting adjacent properties with balls, light or sound. Pool heaters and pumps must be screened from view from the street.

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

(18) Energy Conservation Equipment. Subject to the requirements of U.C.A., Section 17-27-901, no solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on a Lot, without prior written approval.

(19) Business Use. No resident may operate a commercial trade or business in or from his Unit with employees of any kind. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Dwelling Unit. No commercial trade or business may be conducted in or from a Lot or Dwelling Unit unless (a) the business activity conforms to all home occupation and zoning requirements governing the Subdivision; (b) the operator has a city issued business license; (c) the business activity satisfies any home occupation guidelines adopted by the Board of Directors; and (d) the resident has obtained the prior written consent of the Board of Directors. Notwithstanding the foregoing, the leasing of a Lot shall not be considered a trade or business within the meaning of this subsection.

(20) Storage of Commercial Equipment. No Lot shall be used or maintained as a storage area for commercial equipment of any kind for use in a trade or business.

(21) Subdivision of Lots. No Owner shall at any time be permitted to subdivide or attempt to subdivide his Lot.

(22) Structural Alterations. No structural alterations to the Common Area or Facilities are allowed without the prior written consent of the ARC or Board of Directors.

(23) Mail Boxes. Only the designated and approved mail boxes provided and installed by the Developer at each end of the Subdivision are approved.

(24) Junk. The storage or accumulation of junk, trash, manure or other offensive or commercial materials is prohibited.

(25) Clotheslines. Clotheslines or other facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view.

(26) Open Yard Space. Open yard space shall remain unoccupied and unobstructed by buildings, vehicles and/or hard surfaces such as asphalt, cement and packed surface from this time henceforth and forever, unless authorized in writing by the Board of Directors.

(27) Insurance. Nothing shall be done or kept in, on or about any Lot or the Common Area which may result in the cancellation of or increase the premium (over what the ARC would have paid but for such activity) for the insurance on the property.

(28) Laws. Nothing shall be done or kept in, on or about any Lot or the Common Area, or any part thereof, which would be a violation of any statute, rule, law, ordinance, regulation, permit or other validly imposed requirement of any governmental body. Any violations of City ordinances are expressly prohibited. In the event of conflict between the provisions of these Covenants and any applicable state, City, or other governmental body law, rule, regulation or ordinance, the applicable provision of state, City or governmental body law, rule, regulation or ordinance shall govern.

(29) Damage or Waste. No damage to or waste of the Common Area shall be committed by any Owner, his family members, friends, guests, visitors or invitees. Each Owner shall indemnify and hold the ARC and other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or his family members, guests, visitors or invitees.

(30) Housing for Older Persons. This Subdivision is intended and operated for occupancy by persons age 55 and older. Persons who purchase Lots are permitted to occupy Dwelling Units; provided, however:

a. At least 80% of the occupied Dwelling Units must be occupied by at least one Age Qualified Person. Once a Dwelling Unit is occupied by an Age-Qualified Occupant, other Qualified Occupants of that Dwelling Unit may continue to occupy that Dwelling Unit, regardless of the termination of the Age-Qualified Occupant's occupancy, if at least 80% of the Dwelling Units within the Subdivision are occupied by least one Person 55 years of age or older;

b. The Association shall publish and adhere to policies and procedures as may be necessary to establish and maintain the Property's status as an Age Restricted Community; and

c. The Association shall comply with all of the rules issued by the Secretary of HUD for verification of occupancy. The HOA Board shall either provide or contract for surveys and affidavits to verify that the Property is and remains an Age Restricted Community.

The Association shall have the power and authority to enforce this Section and the Age Restriction by any legal or equitable means available, as the HOA Board deems appropriate.

4.8 Land Use and Building Type. This is a residential subdivision which includes both the architecture and appearance of the buildings and the nature of their use. All Lots must be used exclusively for residential purposes by a single family. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family residential dwelling. Accessory Buildings are not permitted. A small storage shed may be allowed but only with the prior written consent of the ARC. The front exterior elevations of all buildings shall be stucco and rock. Other construction materials are not allowed on the front exterior elevations.

a) Entry Monument. If an Owner purchases a Lot which includes a common improvement, including by way of illustration but not limitation an Entry, Entry Monument, planter, planter box, planter strip, perimeter fence, wall, street light, exterior lighting or other landscaping treatment of any kind, shall, at his sole expense, maintain such common elements in good condition, and may not improve this property or place any plant, hedge, tree, bush shrub or object, natural or artificial, behind, to the side or in front of such improvement or feature or so as to impair, obstruct, block or impede the view or purpose of the Entry, Entry Monument or other improvement, planter box, landscaping strip or any such special landscaping feature.

4.9 Architectural Control. No existing building shall be altered on any Lot until the construction plans and specifications and a plan showing the alteration of the structure have been approved by the ARC as to the quality of workmanship and materials, harmony of external design with existing structures. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the front building setback line unless similarly approved.

4.10 Easements. Easements for utilities, the Entry Monument, drainage systems and facilities, and irrigation are reserved hereby and on the recorded Plat. An Owner may not do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of utilities, Entry Monument, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. If a drainage channel is altered by an Owner, the Association expressly reserves the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass. In addition, the easement and right of way area of or on each Lot, including by way of illustration but not limitation, the Entry Monument, in whole or in part, utilities, drainage systems and facilities, and irrigation, and all improvements within said area shall be maintained continuously by the Owner of the property, at his sole expense, excepting those Improvements for which a public authority or utility company is expressly responsible.

4.11 Maintenance. The Lots and Common Area, including without limitation the Landscaping Easement and Entry Monument, shall be maintained in a usable, clean, functional, aesthetic, attractive and good condition.

4.12 Landscaping. The Developer has built-out and installed all landscaping on the Lots and in the Common Area, including the placement of sod and sprinkling system in the front, side

and rear yards. The Association shall maintain, repair and replace all landscaping on all Lots (including the front, side and rear yards unless otherwise specifically and expressly noted) and in the Common Area. The Association shall have absolute and unilateral control over the landscaping in the front yards, including the design, location, selection, and planting of all trees, shrubs, bushes, sod and plants, and no alterations, modifications or changes of any kind may be made by any Owner or resident at any time without the prior written consent of the Architectural Review Committee (ARC), and any such alteration, modification or change made without its prior written consent shall be considered non-conforming. Upon the written request of the ARC, any non-conforming landscaping shall be removed and the property shall be restored to its original condition forthwith. The Association's rear yard care will be limited to the maintenance, repair and replacement of the grass and sprinkling system. Each Owner is responsible for and may landscape his own planting, garden and flower beds in his rear yard area or contract with the Association to do so.

4.13 Legal Description. The Property shall be held, transferred, sold, conveyed and occupied subject to the provision of the Declaration as it may be supplemented or amended from time to time.

4.14 Mortgagee Protection. Nothing herein contained, and no violation of these covenants, conditions, and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value.

V. ARCHITECTURAL REVIEW COMMITTEE

5.1 Architectural and Related Issues. Since aesthetics, the integrity and harmony of the original design, and the quality of construction and materials throughout the Subdivision is important, all architectural designs, plans, specifications, construction materials, and construction must be (a) reviewed and approved by the ARC or its designee and (b) consistent with the restrictions set forth herein governing the Subdivision.

5.2 Architectural Review Committee (ARC). While the ARC will not police the Subdivision, the ARC will respond to complaints and has the sole right and exclusive authority to resolve all architectural issues. Powers may be delegated by the ARC, provided any such delegation shall specify the scope of responsibilities delegated and shall be subject to the right of the ARC to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and/or to veto any decision which the ARC determines, in its sole discretion, to be inappropriate or inadvisable. Members serving on the ARC shall be appointed or elected to serve a two (2) year term and until his or her successor is qualified and appointed.

5.3 ARC Powers and Standing. Any instrument executed by the ARC or its legal representative that recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The ARC shall constitute a legal entity capable of dealing in its own name or in behalf of two or more Owners. The ARC shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions, including without limitation:

- a) Access. The power and authority to enter into or upon any Lot to make inspections, evaluations or repairs and to do other work necessary for the proper maintenance and operation of the Subdivision, to enforce the decisions of the ARC, or to avoid damage to person or property in an emergency, and shall not be guilty of a trespass.
- b) Execute Documents. The authority to execute and record, on behalf of and for the benefit of Owners, any contract, document, instrument or writing.
- c) Standing. The power to sue and be sued.
- d) Contractual Authority. The authority to enter into contracts which in any way concern the Subdivision. Also requires approval of the Board of Directors.
- e) Promulgate Rules. The authority to promulgate such reasonable rules and regulations as may be necessary or desirable to aid the ARC in carrying out any of its functions, including by way of illustration but not limitation design guidelines.
- f) Determine Common Expenses. The authority to determine the Common Expenses of operating the ARC and administering the Declaration.
- g) Assessments. The authority to assess each Lot Owner, his share of the Common Expenses. The common profits of the Property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to the Owners equally and uniformly.
- h) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the ARC to perform its functions for and in behalf of the Owners.

5.4 Procedures for Approval of Plans and Specifications. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time. In the event that the ARC fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved; provided, however, anything to the contrary notwithstanding, no Dwelling shall be constructed or altered unless it meets the following minimum requirements:

- a) Only single family residential Dwellings are allowed.
- b) The height of any Dwelling shall not exceed two stories above ground.

c) The Dwelling exteriors, in their entirety, must consist of either maintenance free stucco and masonry unless another construction material is approved by the ARC in writing. No aluminum or vinyl is permitted except on awnings, eaves, and fascia.

d) No detached accessory buildings are permitted.

e) Landscaping. See section IV, item 4.12, on page 22.

f) Fencing: See section IV, item 4.7 e) (14), on page 17.

g) Designs submitted for approval shall be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process.

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

5.6 Variance. The ARC may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

5.7 Limitation of Liability. The ARC or any of their employees, agents, representatives or consultants shall not be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans, and specifications. By accepting a deed or other document of conveyance to a Lot, each Owner agrees to and shall defend, indemnify, save and hold the ARC, and their employees, agents, representatives or consultants, harmless from any and all loss, damage or liability they may suffer, including defense costs and attorney fees, as a result of any claims, demands, actions, costs, expenses, awards or judgments arising out of their review or approval of architectural designs, plans and specifications.

5.8 Enforcement of Architectural Guidelines. Any construction, alteration, or other work done in violation of this Declaration, as amended shall be considered to be nonconforming. Upon written request from the ARC an Owner shall at his own cost and expense remove such nonconforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to

enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser.

5.9 Default in Fulfillment of Landscaping Obligation or Unauthorized Structure. If any Owner refuses to remove an unauthorized structure from his Lot after written notice, the ARC shall have the right, but not the duty, without further notice or warning to remove the unauthorized structure and/or perform the maintenance, without being guilty of a trespass, and the cost thereof shall be the debt of the Owner at the time the cost is incurred and is collectable as such. Suit to recover a money judgment for non payment is maintainable without foreclosing or waiving the lien securing it. If any owner fails or refuses to make payment when due, that amount constitutes a lien on the interest of the owner in the property, and upon the recording of notice of lien by the ARC or its agent, it is a lien upon the Owner's interest in the property prior to other liens and encumbrances, recorded or unrecorded, except: (a) tax and special assessment liens on the lot in favor of any assessing unit or special improvement district; and (b) encumbrances on the interest of the Owner prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

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

5.11 Leases. Any agreement for the leasing, rental, or occupancy of a Lot shall be in writing. Every lease shall be subject to the provisions of the Subdivision Documents. Any failure by a tenant to comply with the terms of the Subdivision Documents shall be a default under the lease. No Owner shall be permitted to lease his Unit on a transient, hotel, vacation, or short-term basis which shall be deemed to be any rental within an initial term of less than one (1) year. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his entire Unit. The foregoing lease restrictions do not apply to mortgages who have taken title or possession of a Lot by foreclosure or a deed in lieu of foreclosure.

a) Each Owner agrees, by the acceptance of a deed or other document of conveyance to a Lot, that in order to maintain the value of the purchased property and the subdivision, the leasing and renting of Dwelling Units is subject to the following covenants, conditions and restrictions:

(1) Renting rules and regulations adopted by the Board of Directors, as they may be amended from time to time.

(2) No Owner may lease or rent his Dwelling Unit for a period of one (1) year from the date of closing.

(3) No Owner shall be permitted to lease his Dwelling Unit for short term, transient, hotel, vacation, seasonal or corporate use purposes. For purposes of this section the term

"short term" shall be considered to be any rental with an initial term of less than six (6) months. Daily or weekly rentals are expressly prohibited. No Owner may lease individual rooms to separate Persons or less than his entire Dwelling Unit, including by way of illustration but not limitation letting a room to domestic help or a caretaker, without the prior express written consent of the HOA Board.

(4) "For Rent" or "For Lease" signs are prohibited.

(5) The Board of Directors must approve in writing all lease and rental agreements as to form. Any lease or rental agreement not approved or in violation of the Subdivision Documents shall be considered "non-conforming" and, as such, voidable by the Board of Directors.

(6) The Association may also require that Owners use lease forms or addenda, such as the Crime Free Addendum or the Subdivision Addendum, approved by the Association (or include specific terms in their leases); and the ARC may impose a review or administration fee on the lease or transfer of any Lot.

(7) An Owner may not lease or otherwise grant occupancy rights to his Dwelling Unit, except when in compliance with (a) Orem City Ordinances; and (b) all of the provisions of the First Amendment relating to the Age Restriction that at least 80% of the homes must be occupied by at least one person age 55 or older.

5.12 Easements: Drainage, Support, Maintenance and Repair. The following easements and rights of way are hereby RESERVED for and GRANTED to the Association:

a) A non-exclusive easement over, across, through, above and under the Lots and the Common Area for the operation, maintenance and regulation of the Common Area, amenities and facilities; and

b) A reciprocal easement on, over, under, through and across all Lots and Common Area for the drainage of surface waters on, over, under, through and across the Subdivision. The Developer has established a storm drainage system designed to serve the entire Subdivision (the "Master Storm Drain System"). No Lot Owner shall interfere with the Master Storm Drain System established by the Developer, or its successors or assigns. Each lot shall be developed in a manner consistent with the Master Storm Drain System, and so as not to detract there from or interfere therewith, or the Established Drainage Pattern on any other Lot in the Subdivision. No changes to the Established Drainage Pattern on any Lot shall be permitted without the prior written consent of the Board of Directors. For purposes of this Section, the term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities and improvements in existence at the time such Lot is conveyed to a home purchaser by the Developer, its successor or assign. The City shall have the right to clean and maintain any storm drain or system deemed to be in disrepair within the Subdivision. The Association shall not have the authority to change, by vote, alienation, alteration, transfer, sale, or otherwise, the use of the currently existing areas and structures designed to control storm water run-off unless the consent of the City, or its successor, has first been obtained in writing and compliance with all applicable City ordinances, rules and regulations.

5.13 Liability of Owners and Residents For Damages. Any Owner or resident shall be liable to the Association or other Owners or Residents for damages to person or property in the Community caused by his negligence.

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

VI. RECORDS AND RESPONSIBILITIES

6.1 Delegation of Management Responsibilities. The Association must be managed by a professional or a professional management company. The management company, subject to the direction of the HOA Board, shall be responsible for the day-to-day operation of the Association. The HOA Board shall determine the compensation to be paid to the management company. The termination provision of any contract with the management company must not require a termination penalty or any advance notice of more than ninety (90) days, and no such contract shall be for a term greater than one (1) year.

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

6.3 Reserve Account(s) and Analysis Report. The Board of Directors shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and/or major repairs, if any. The reserve account or accounts shall be funded out of Assessments. The Board of Directors shall dedicate a portion of the monthly Assessment for the reserve account or accounts. The Board of Directors shall prepare and update at least annually a written Reserve Account Analysis, and make the report(s) available to the Owners at the annual meeting of the Association. In addition:

a) HOA Board Discretion/Expenditure Limit. Major Repairs or Capital Improvements to the Subdivision which cost twenty percent (20%) or less of the Total Annual Operations Budget and do not materially alter the nature of the Subdivision, may be authorized by the Board of Directors alone (the "Spending Limit").

b) Owner Approval/Expenditure Limit. Any major Repair or Capital Improvement, the cost of which will exceed the Spending Limit, must, prior to the commencement of construction, be authorized by at least a majority of the Owners.

c) Homeowner Approval/Changing the Nature of the Subdivision. Any Capital Improvement which would materially alter the nature of the Subdivision must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) of the undivided ownership interest in the Subdivision.

6.4 Operation, Maintenance and Alterations. The Lots and Common Area shall be maintained by the Lot Owners and the Association as follows:

a) Area of Common Responsibility. The Association shall maintain, repair and replace, as needed from time to time, the following items:

- Landscaping, including all front yard landscaping (Section IV, item 4.12, page 22);
- All Sidewalks and walkways within the Subdivision (routine maintenance such as snow removal, leaf removal and access. Note: Sidewalks are dedicated to Orem City);
- All Parkstrip Improvements within the Subdivision.
- Grass and sprinkling systems in the rear yards;
- All Common Areas and Facilities;
- All "Common Areas" owned by the Association identified on the Final Plat;
- All "Common Area" dedicated to the HOA, entitled as "H.O.A. Maintained" and identified on the Final Plat; and
- All the parking area near the tennis court.
- All common elements not expressly included in the Area of Personal responsibility.

b) Area of Personal Responsibility. Each Owner shall maintain, repair and replace the following:

- All of his Dwelling Unit, including but not limited to the roof, exterior surfaces, foundation, footings, columns, girders, beams, supports and main walls thereof and private fencing;
- All utility services servicing his Lot, such as power, light, gas, hot and cold water, heating, refrigeration and air conditioning systems;
- All fixtures, furnishings, windows, doors, patios, balconies and decks, garage doors and garage door systems; .

- All of his cement work, driveway, sidewalks;
- All of his rear yard planting, garden and flower beds; and
- Other areas in the rear or side yards not maintained by the Association.

(c) Right to Enter. The Association is hereby granted the right, without claim of trespass or invasion of privacy, to enter any Lot, including the front, side and rear yard areas, any fenced or gated areas to fertilize, weed, remove dead or diseased plant life and trash trees, prune, or otherwise care for the landscaping.

d) Snow and Ice Accumulations. The City shall be responsible for removing snow and ice accumulations from the Dedicated Streets. The Association is responsible for removing all ice and snow accumulations from all sidewalks, Lot driveways and walkways up to the porch within the DaVinci Place Subdivision. Each Lot Owner or resident is responsible for removing all ice and snow from their porch areas.

e) Garbage Removal. Each Owner shall deposit all garbage, trash, debris and refuse from his Lot into the trash receptacle or receptacles which will be made available by the applicable solid waste collector. Each Unit Owner shall make his trash receptacle available to the solid waste collector for pick up on the designated day each week; however, trash receptacles may not be left in the street for a period in excess of twelve (12) hours, and when not placed on the street for pick up, trash receptacles shall be located in a place not visible from the street.

f) Utilities. The Association shall provide those utility services not separately metered and billed to the individual Owners by the provider; provided, however, the Board of Directors may elect to provide electricity to certain Common Area lamp posts from an individual Lot in which case the Lot Owner shall be entitled to a monthly credit in an amount equal to the greater of:

(1) \$2.00, or

(2) The sum equal to the number of watts in the light bulb, multiplied by Rocky Mountain Power Kilowatt rate, multiplied by 4,000, divided by 1,000, and divided by 12.

g) Standard of Care - Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, and good condition. If a dispute arises between a Lot Owner or resident as to the condition of a Lot, the decision of the Board of Directors shall be final and conclusive.

h) Neglect. If the HOA Board determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his family, guests, leasees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the

Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

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

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

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

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

(5) Right of Entry. The Association or its agents or employees shall have a right to entry upon or into any Lot or Common Area as necessary to perform such work and shall not be liable for trespass for such entry or work.

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

j) Alterations to the Common Area. No Owner or resident may make any structural alterations, modifications, changes or improvements to the Common Area, including but not limited to any additions, extensions; enclosures, fencing, decks, patios, walkways, structures or sheds not shown on the approved plans and specifications, without the prior written consent of the Board of Directors.

VII. ASSESSMENTS, COLLECTIONS AND FINES

7.1 Common Expenses. Each Owner, upon receipt of a deed or other document of conveyance to a Lot, agrees to pay his share of the Common Expenses.

a) Purpose of Assessments; The Assessments are for the general purpose of operating the Subdivision, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board of Directors.

b) Creation of Assessments. The Assessments shall pay for the Common Expenses of the Association as may be from time to time specifically authorized by the Board of Directors.

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

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

(2) Basis. Shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board of Directors is required or permitted to maintain, common lighting, water charges, staining, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, legal and accounting Assessments, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

d) Apportionment. The common profits of the property shall be distributed among, the common expenses shall be charged and voting rights shall be allocated to the Lot Owners, equally.

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

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

g) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed, accruing interest late fees, and collection costs, including attorney's fees. No first mortgagee or beneficiary under a first deed of trust who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title.

h) Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Board of Directors may from time to time affect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days written notice of any changes.

i) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Board of Directors.

j) Statement of Assessments Due. Upon written request, the Board of Directors shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

k) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled, which each Owner, by virtue of his acceptance of a deed or other document of conveyance to a Lot, waives.

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

a) HOA Board Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100s Dollars (\$500.00) (the "Special Assessment Limit") per Lot in anyone fiscal year, the Board of Directors may unilaterally impose the special assessment without any additional approval.

b) Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association.

The Board of Directors in its discretion may allow any special assessment to be paid in installments.

7.3 Benefit Assessments. The Board of Directors shall also have the power specifically to assess the Owners in a particular area pursuant to this Section as, in its discretion, it shall deem necessary or appropriate, if the specific assessment is not for any maintenance, repair or replacement ordinarily required by this Declaration and the Owner has the choice to accept or reject the benefit.

a) Benefit Only To Specific Lot. If the expense benefits less than all of the Lots, then those Lots benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Lots according to the benefit received.

b) Unequal or Disproportionate Benefit. If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Lots according to the benefit received.

Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Directors' right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section.

7.4 Individual Assessments. Individual Assessments shall be levied by the Board of Directors against a Lot and its Owner to reimburse the Association for:

- a) fines levied for violations of and costs incurred in enforcing the Subdivision Documents;
- b) costs associated with the maintenance, repair or replacement of Common Area for which the Lot Owner is responsible;
- c) any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Subdivision Documents; and
- d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

7.5 Collections. Assessments must be paid in a timely manner and shall be collected as follows:

- a) Time is of the Essence. Time is of the essence and all Assessments shall be paid promptly when due.
- b) Delinquent Assessments. Any Assessments which are not paid when due are delinquent.
- c) Late Fees and Default Interest. Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of twenty five Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of One and one-half percent (1.5%) per month shall accrue on all delinquent accounts.
- d) Notice of Lien. If any Assessment is a notice of lien evidencing the unpaid amounts, accruing interest, late charges, attorney's fees, the cost of a foreclosure or abstractor's report, and any other Additional Charges permitted by law should be filed with the County Recorder. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. It may be executed by the Association's attorney, manager, HOA Board Member or other designated agent.
- e) Foreclosure of Lien and/or Collection Action. If any Assessments remain unpaid, the Association may, as determined by the Board of Directors, institute suit to collect the amounts due and/or to foreclose the lien.
- f) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

g) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Lot.

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

i) Application of Payments. All payments shall be applied as follows: Additional Charges, Delinquent Assessments and Current Assessments.

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

k) Appointment of Trustee. If the Board of Directors elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

l) Attorney in Fact. Each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Lot, if the Lot is rented and Owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

7.6 Fines. Each Owner and Resident is responsible for adhering to the Subdivision Documents governing the Subdivision. A breach of the Subdivision Documents is subject to enforcement pursuant to the declaration and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his family members, residents, tenants and Guests. Fines levied against the family members, residents, tenants, and Guests of an Owner are the

responsibility of the Owner. The Board of Directors shall react to each material violation in the following manner:

a) Fines imposed are final unless appealed in writing to the Board of Directors within thirty (30) days of written notification of the violation. If a request for a hearing is not submitted to the Board of Directors within thirty (30) days, the right to a hearing is waived, and the fine imposed will stand. A request for a hearing to appeal should be sent in writing to the Manager or Secretary of the Association.

b) Before assessing a fine under Subsection (a), the Board of Directors shall give notice to the homeowner of the violation and inform the owner that the fine will be imposed if the violation is not cured within the time provided in the declaration, By-Laws, or rules, which shall be at least forty-eight (48) hours.

c) A fine assessed under Subsection (a) shall:

(1) be made only for a violation of a restrictive covenant, rule or regulation;

(2) be in the amount specifically provided for in the declaration, By-Laws, or association rules for that specific type of violation, not to exceed \$500.00; and

(3) accrue interest and late fees as provided in the declaration, By-Laws, or association rules.

d) Cumulative fines for a continuing violation may not exceed \$500 per month.

e) An Owner who is assessed a fine under Subsection (a) may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with standards of due process adopted by the Board of Directors. No finance charge, default interest, or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

f) An Owner may appeal a fine issued under Subsection (a) by initiating a civil action within one hundred and eighty (180) days after: (1) A hearing has been held and a final decision has been rendered by the Board of Directors under Subsection (e); or (2) The time to request an informal hearing under Subsection (e) has expired without Owner making such a request.

g) A fine assessed under Subsection (a) which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under Section 6.6(c) above.

VIII. LIABILITY OF HOA BOARD

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

IX. INSURANCE

9.1 Insurance. The Board of Directors shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, insurance on the Common Areas satisfying at least the following requirements:

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

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

c) Liability Insurance. Liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated subdivisions in the county. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.

d) Director's and Officer's Insurance. Adequate director's and officer's liability insurance (aka Errors and Omissions insurance).

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

(1) Agents. Furthermore, where the Board of Directors or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Board of Directors or the Association.

(2) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Board of Director's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Board of Directors, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots, plus reserve funds.

(3) Quality of Coverage. The bonds required shall meet the following additional requirements:

a. they shall name the Board of Directors, the Owners Association, and the Property Manager as obligee;

b. if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense;

c. the premiums on all bonds required herein for the Board of Directors and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Board of Directors or the Association as part of the Common Expenses; and

d. the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Board of Directors and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, and FNMA.

f) Earthquake Insurance shall not be required unless requested by a least Seventy five percent (75%) of the Members of the Association.

g) Miscellaneous Items. The following provisions shall apply to all insurance coverage:

(1) Quality of Carrier. A "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports -- International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurers Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service -- if the carrier is issuing a master policy or an insurance policy for the Common Area in the Subdivision.

(2) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Lot Owners of DA VINCI PLACE, for the use and benefit of the individual Owners."

(3) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

(4) Beneficiary. In any policy covering the entire Subdivision, each Owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

(5) Certificate of Insurance; Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(6) Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

(7) Other Miscellaneous Provisions. Each insurance policy shall contain at least the following additional miscellaneous items:

a. Waiver of Subrogation. A waiver of the right of a subrogation against Owners individually;

b. Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual Owner; and

c. Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the Association.

(8) Individual Insurance. Each Owner and resident shall purchase and maintain adequate liability and property insurance on his Lot, Dwelling Unit, personal property and contents; provided, however, no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners and their mortgagees, may realize under any insurance policy which the

Association may have in force on the Property at any particular time.

(9) Primary Coverage. The insurance coverage of an Owner shall, in the event the Association also has insurance covering the loss, be primary and the insurance of the Association shall be secondary.

(10) Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

(11) Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Lot, and may be enforced by them.

(12) Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated subdivision in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost, and, or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Subdivision has any central heating or Cooling.

(13) Restrictions on Policies. No insurance policy shall be maintained where:

a. Individual Assessments Prohibited. Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Board of Directors, the Association, FNMA, or the designee of FNMA.

b. Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

c. Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the HOA Board, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

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

X. DESTRUCTION

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

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

(1) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Subdivision or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) or more of the estimated restored value of the Subdivision.

(2) "Partial Destruction" shall mean any other damage or destruction to the Subdivision or any part thereof.

(3) "Substantial Condemnation" shall exist whenever a complete taking of the Subdivision or a taking of part of the Subdivision has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) or more of the estimated restored value of the Subdivision.

(4) "Partial Condemnation" shall mean any other such taken by eminent domain or grant or conveyance in lieu thereof.

(5) "Substantial Obsolescence" shall exist whenever the Subdivision or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Subdivision.

(6) "Partial Obsolescence" Shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

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

(8) "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Subdivision to its former condition.

(9) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board of Directors or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation

payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

b) Determination by Board of Directors. Upon the occurrence of any damage or destruction to the Subdivision or any part thereof, or upon a complete or partial taking of the Subdivision under eminent domain or by grant or conveyance in lieu thereof, the Board of Directors shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Subdivision. In addition, the Board of Directors shall, from time to time, review the condition of the Subdivision to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

c) Restoration of the Subdivision. Restoration of the Subdivision shall be undertaken by the HOA Board promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Subdivision's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Lots which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

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

e) Excess Insurance. If the insurance proceeds condemnation awards, or payments in lieu of condemnation actually received by the Board of Directors or Association exceed the cost of Restoration when Restoration is undertaken, then the excess funds shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This covenant is also for the benefit of the Association and any Mortgagee, and, therefore, may also be enforced by them. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

f) Inadequate Insurance. In the event the cost of Restoration exceeds Available Funds, all of the Lots shall be assessed for the deficiency on the basis of their respective percentages of undivided Ownership interest in the Common Areas.

g) Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Lots will not be the subject of Restoration (even though the Subdivision will continue as a PRD) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be

immediately reallocated to the remaining Lots.

h) Sale of Subdivision. Unless Restoration is accomplished as set forth above, the Subdivision shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Plat Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the HOA Board to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

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

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

k) Restoration Power. The Board of Directors, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Subdivision and each Lot therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

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

XI. MORTGAGES

11.1 Mortgagee Protection. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Lot in foreclosure. The lien or claim against a Lot for unpaid Assessments levied by the Board of Directors or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due. In addition:

a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot the lien of any Assessments becoming due thereafter.

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

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

d) Management Contracts. Any agreement for professional management of the Subdivision, and any contract for goods or services, or any lease which is entered into by the Board of Directors or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause upon at least sixty (60) days prior written notice to the other party thereto.

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

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

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

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

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

f) No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or similar restriction.

XII. AMENDMENTS

12.1 Amendment. This Declaration may be amended by the Board of Directors at any time. In addition:

a) Consent of the Owners. The affirmative vote of at least sixty-seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration or the Plat Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board of Directors. In such instrument the Board of Directors shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained; and

b) Consent of Eligible Mortgagee. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Subdivision; and the consent of Eligible Mortgagees holding at least fifty-one percent (51 %) of the undivided Ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Plat Map which establishes, provides for, governs, or regulates any of the following:

- Voting rights;
- Increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- Reductions in reserves for maintenance, repair, and replacement of Common Areas, Facilities and Elements;
- Responsibility for maintenance and repairs;
- Reallocation of interests in the Common Area, Limited Common Area, and general or limited common elements, or rights to their use;
- Redefinition of any Lot boundaries;
- Convertibility of Lots into Common Area or Elements, or vice versa;
- Expansion or contraction of the Subdivision, or the addition, annexation, or withdrawal of property to or from the Subdivision;
- Hazard or fidelity insurance requirements;
- Imposition of any restrictions on the leasing of Lots or Dwelling Units;
- Imposition of any restrictions on a Lot Owner's right to sell or transfer his Lot;
- A decision by the Association (if it consists of more than 50 Lots) to establish self management if professional management had been required previously by the Subdivision Documents or by an Eligible Mortgage holder;
- Restoration or repair of the Subdivision (after damage or partial condemnation) in a manner other than that specified in the documents; and
- Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

Any addition or amendment shall not be considered material for purposes of this Paragraph b) if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does

not deliver to the Board of Directors or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map or the termination of the legal status of the Subdivision as a Utah subdivision if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

12.2 Consistency between Declaration, Articles and By-Laws. Neither the Articles nor the By-Laws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration, as amended.

XIII. MISCELLANEOUS

13.1 Working Capital Fund. A working capital fund was established by the Developer prior to the last home being sold; funds were deposited with the property manager of Future Community Services, Inc. (FCS).

13.2 Transfer of Management. The last Lot was sold in October 2010. The transfer from the Developer to the Association took place in an orderly manner on April 26, 2011.

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

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

13.5 Enforcement and Right to Recover Attorneys Fees. The Association, Board of Directors, the ARC or any aggrieved Unit Owner may take action, at law or in equity, to enforce the terms, covenants or conditions of the Subdivision Documents. Should the Association, Board of Directors, the ARC or a Unit Owner be required to take action to enforce the Subdivision Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

13.6 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Subdivision designed to make the Subdivision safer than it otherwise might be. However, neither the Association nor the HOA Board shall in any way be considered insurers or guarantors of security within the Subdivision. Neither the Association nor the HOA Board shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and residents, their guests and invitees, as applicable, acknowledge that neither the Association nor the HOA Board represent or warrant that any security measures undertaken will insure their safety. All Owners and residents, their guests and invitees, acknowledge and understand that the Association and the HOA Board are not insurers of their safety and they hereby assume all risks for loss or damage to their person or property and further acknowledge that the Association and the HOA Board have made no representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Subdivision.

13.7 Agent for Service of Process. The initial Registered Agent was Christopher P. Gamvroulas and the initial office of the Registered Agent was at 978 Woodoak Lane, Salt Lake City, Utah 84117. Since April 26, 2011, the Association's professional manger is now the person to receive service of process under the Act.

13.8. Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments.

a) If an Owner fails or refuses to pay any assessment when due, the Board of Directors may (a) terminate the owner's right to receive utility services paid as a common expense; and (b) terminate the owner's right of access and use of recreational facilities., after giving notice and an opportunity to be heard.

b) Before terminating utility services or right of access and use of recreational facilities, the manager or Board of Directors shall give written notice to the owner in the manner provided in the declaration, By-Laws, or association rules. The notice shall state:

(1) utility services or right of access and use of recreational facilities will be terminated if payment of the assessment is not received within the time provided in the declaration, By-Laws, or association rules, which time shall be stated and be at least 48 hours;

(2) the amount of the assessment due, including any interest or late payment fee; and

(3) the right to request a hearing.

c) An owner who is given such notice may request an informal hearing to dispute the assessment by submitting a written request to the Board of Directors within 14 days from the date the notice is received. A notice shall be considered received on the date (a) it is hand delivered, (b) it is delivered by certified mail, return receipt requested, or (c) five (5) days after it is deposited in the U.S. Mail, postage prepaid, addressed to the owner's last known address on the books and records of the Association

d) The hearing shall be conducted in accordance with the standards provided in the declaration, By-Laws, or association rules.

e) If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

f) Upon payment of the assessment due, including any interest or late payment fee, the manager or Board of Directors shall immediately take action to reinstate the terminated utility services to the Lot and right to use of recreational facilities.

13.9 Assignment of Rents.

a) If the owner of a Lot who is leasing the Lot fails to pay any assessment for a period of more than 60 days after it is due and payable, the Board of Directors may demand the tenant to pay to the association all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the association is paid; provided, however, the manager or Board of Directors must give the owner written notice, in accordance with the declaration, By-Laws, or association rules, of its intent to demand full payment from the tenant. This notice shall:

(1) provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the declaration, By-Laws, or association rules;

(2) state the amount of the assessment due, including any interest or late payment fee;

(3) state that any costs of collection, not to exceed \$150.00, and other assessments that become due may be added to the total amount due; and

(4) provide the requirements and rights described herein.

b) If the owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or HOA Board may deliver written notice to the tenant, in accordance with the declaration, By-Laws, or association rules, that demands future payments due to the owner be paid to the association pursuant hereto. A copy of the notice must be mailed to the owner at his last known address as shown on the books and records of the Association. The notice provided to the tenant must state:

(1) that due to the owner's failure to pay the assessment within the time period allowed, the owner has been notified of the Board of Director's intent to collect all lease payments due to the Association pursuant hereto.

(2) that until notification by the Association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the owner are to be paid to the Association; and

(3) payment by the tenant to the Association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection, suit or other action may not be initiated by the owner against the tenant for failure to pay.

c) All funds paid to the Association pursuant hereto shall be deposited in a separate account and disbursed to the Association until the Assessment due, together with any cost of administration which may not exceed \$25.00, is paid in full. Any remaining balance must be paid to the owner within five business days of payment in full to the Association.

d) Within five business days of payment in full of the assessment, including any interest or late payment fee, the manager or Board of Directors must notify the tenant in writing that future lease payments are no longer due to the Association. A copy of this notification must be mailed to the owner.

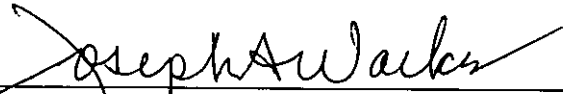
e) As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a Lot by any person or persons, other than the owner, for which the owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

13.10 Effective Date. The Declaration, as amended herein, shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

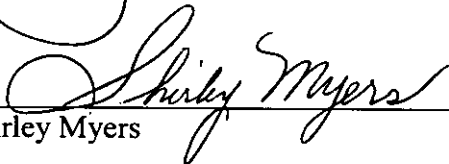
13.11 Duration. These restrictive covenants shall run with the land and shall be binding upon the owners thereof, their heirs, successors and assigns, for a term of twenty (20) years from the date the original Declaration was recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

IN WITNESS WHEREOF, the directors have approved this 2012 Declaration, as of January 1, 2012

DIRECTORS:



Joseph Walker



Shirley Myers



Burton Butterfield

ACKNOWLEDGMENT

STATE OF UTAH)
 ss:
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 13th day January, 2012 by Joseph Walker, Shirley Myers and Burton Butterfield, the Directors of the DaVinci Place Subdivision Homeowner's Association, Inc. and duly acknowledged to me that they executed the same as said Directors.



NOTARY PUBLIC

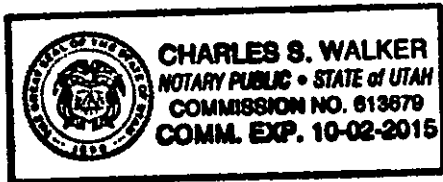


EXHIBIT "A"

LEGAL DESCRIPTION

The Land described in the foregoing Declaration, as amended is located in Utah County, Utah and is described more particularly as follows:

A portion of Lots 2 and 3, Plat "G", Timpanogos Research and Technology Park, as shown on file in the office of the Utah County Recorder, Utah County, Utah.

Also being described as:

Commencing at a point located South 89°54'39" West along the Section line 328.07 feet and North 33.00 feet from the Southeast corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 89°54'42" West 488.66 feet; thence along the arc of a 100.00 foot radius curve to the right 34.82 feet (chord bears North 80°06'54" West 34.64 feet); thence along the arc of a 100.00 foot radius curve to the left 34.82 feet (chord bears North 80°06'54" West 34.64 feet); thence South 89°54'39" West 200.00 feet; thence along the arc of a 15.00 foot radius curve to the right 23.59 feet (chord bears North 45°02'40" West 21.23 feet); North 187.85 feet; thence along the arc of a 100.00 foot radius curve to the left 22.41 feet (chord bears North 06°25'09" West 22.36 feet); thence along the arc of a 100.00 foot radius curve to the right 22.41 feet (chord bears North 06°25'09" West 22.36 feet); thence North 452.87 feet; thence East 164.19 feet; thence South 45°00'00" East 250.00 feet; thence East 226.27 feet South 66°45'53" East 227.17 feet; South 00°07'16" East 444.59 feet to the point of beginning.

Area: 446,293 SF 10.25 Acres

EXHIBIT "B"

OWNERSHIP PERCENTAGES

All Lots 1 through 46 (except Lot 33, the tennis court) have a $1/45^{\text{th}}$ share or 2.2222% interest each in the common areas.

(Example Lot No. 1 has a $1/45^{\text{th}}$ share or 2.2222% interest)