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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
DAVID G KILLPACK  
5151 S 900 E STE 200  
SLC UT 84117  
BY: ZJM, DEPUTY - NA 51 P.

**WHEN RECORDED RETURN TO:**

David G. Killpack  
5151 South 900 East, Suite 200  
Salt Lake City, Utah 84117

AMENDED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

AUBURN FIELDS DEVELOPMENT

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AUBURN FIELDS, LLC

AS DECLARANT

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AFTER RECORDING, PLEASE RETURN TO:

David G. Killpack, Esq.  
AUBURN FIELDS, LLC  
5151 South 900 East, Suite 200  
Salt Lake City, Utah 84117

AMENDED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
AUBURN FIELDS DEVELOPMENT

This Declaration is made and executed this 16<sup>th</sup> day of July, 2007, by AUBURN FIELDS, LLC, a Utah limited liability company, with its principal place of business located at 5151 South 900 East Suite 200, Salt Lake City, Utah, 84117 (hereinafter referred to as the "Declarant").

RECITALS:

A. This Declaration affects certain real property located in Salt Lake County, Utah, which is more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE

B. Declarant owns all of the real property described above (hereinafter referred to as "Tract").

C. Declarant has constructed, is in the process of constructing or will construct upon the described property a residential development which shall include a combination of 4-plex, 5-plex and 6-plex units, common area and other improvements. All such construction has been, or is to be, performed in accordance with the plans contained in the Record of Plat Map previously recorded, or to be recorded herewith.

D. Declarant intends to sell, to various purchasers, the fee title to the individual units contained in the Tract, and a corresponding membership interest in the Homeowner's Association (which shall own the Common Area), subject to the Plat Map, and the covenants, conditions and restrictions set forth herein.

E. Declarant desires, by filing this Declaration and Record of Plat Map, to submit the Tract and all improvements now or hereafter constructed thereon to the Tract and the terms, covenants and conditions of this Declaration.

F. The Project is to be known as "AUBURN FIELDS."

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



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

## ARTICLE I

### DEFINITIONS

When used in this Declaration (including the "Recitals" above), each of the following terms shall have the meaning indicated:

1. Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including, but not limited to, all attorney's fees, late charges, service fees, filing and recording fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association.
2. Additional Land shall mean and refer to the additional real property subject to Declarant's unilateral right of annexation and development as provided in this Declaration, which property shall be contiguous to the Project and may be developed as additional phases in the future.
3. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the AUBURN FIELDS OF DRAPER Homeowners Association on file or to be filed with the Utah Department of Commerce.
4. Assessments shall mean and refer to the allocation of Common Expenses which each unit owner is obligated to pay.
5. Association shall mean and refer to the AUBURN FIELDS OF DRAPER Homeowner's Association consisting of all unit owners at the AUBURN FIELDS DEVELOPMENT taken as, or acting as, a group.
6. Board of Trustees shall mean the governing body of the Association and may from time to time be called the "Board," "Committee" or other name. The Board of Trustees shall be elected from the Members of the Association as hereinafter set forth.
7. Building shall mean and refer to any of the structures constructed in the Project.
8. Business and Trade are terms which shall be construed to have their ordinary, generally accepted meanings, and 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.

9. By-Laws shall mean and refer to the By-Laws of AUBURN FIELDS Homeowner's Association.

10. Class B Control Period shall mean and refer to the period of-time during which the Class B Member is entitled to appoint all or a Majority of the Members of the Board, which shall begin at such time as one hundred percent (100%) of all dwellings are sold. Prior thereto, the Developer shall have control of the Homeowner's Association, unless otherwise agreed.

11. Common Areas shall mean and refer to all real property in the Project in which the Association owns an interest for the common use and benefit of the Owners, their successors, assigns, tenants, family members, guests and invitees, including, but not limited to, the following items:

- a) All Common Areas and Facilities designated as such on the Plat Map or Maps;
- b) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Unit owners, such as telephone, electricity, gas, water, and sewer, except to the extent that said utilities exist on and service a specific unit and residence;
- c) The Project's outdoor grounds including landscaping, street lighting, walkways, sidewalks, parking spaces and roadways, but expressly excluding the individual units;
- d) All portions of the Project not specifically included on the individual units; and
- e) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its members.

The Common Area to be owned by the Association at the time of the conveyance of the first unit is the property described and set forth on the official plat thereof on file with the Salt Lake County Recorder.

It is understood that the actual location of certain homes and other improvements to be constructed on the units might inadvertently deviate slightly from the location indicated by the official plat of the Project. The Common Area shall therefore be subject to minor encroachments of such homes and other improvements which extend slightly beyond the boundaries of their respective units, but are in substantial compliance with the official plat. Each Owner shall therefore be deemed to have an easement on the Common Area to the extent of any such minor encroachment from its Unit. Furthermore, if ingress or egress to any area is through, over or upon the common area, any conveyance or encumbrance of such Common Area is subject to and subordinate to the Unit owner's easement.

12. Common Expense shall mean and refer to:

- a) All sums lawfully assessed against the unit 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 Project Documents.
13. Community shall mean and refer to the Project.
14. Community Wide Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community as determined by the Board from time to time.
15. Declarant shall mean and refer to AUBURN FIELDS, LLC, a Utah limited liability company and its successors and assigns, unless otherwise indicated.
16. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for AUBURN FIELDS DEVELOPMENT.
17. Developer shall mean AUBURN FIELDS, LLC, or its successors or assigns.
18. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.
19. Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.
20. Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Board. A vote which is for any reason suspended is not an "eligible vote."
21. Family shall mean and refer to a group of natural persons residing in the same residential structure and maintaining a common household.
22. Guest shall mean and refer to a person who is not a Permanent Resident and whose presence within the Project as a visitor or invitee is approved by or is at the request of a particular Resident.
23. 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, Units, utility systems, fixtures,

plumbing, electrical, heating, air conditioning, streets, roads, walkways, sidewalks, pathways, driveways, parking areas, maintenance shed, landscaping, trees, shrubs, bushes and green space.

24. Land shall mean and refer to all of the real property subject to this Declaration.
25. Lot shall mean and refer to any numbered plot of land shown on the recorded plat map for the Project.
26. Majority shall mean and refer to those eligible votes of owners or other groups as the context may indicate totaling more than fifty percent (50%) of the total eligible number.
27. Manager shall mean and refer to the person or entity appointed or hired to manage and operate the Project.
28. Map shall mean and refer to the Plat Map.
29. Member shall mean and refer to an owner obligated, by virtue of his ownership, to be a shareholder in the Association and, where the context permits, a representative of the owners serving on the Board of Trustees.
30. Mortgage shall mean and refer exclusively to either a first mortgage or first deed of trust on any unit, but shall not mean or refer to a uniform real estate contract or executory contract of sale.
31. 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 unit, but shall not mean or refer to a seller under a uniform real estate contract or executory contract of sale.
32. Owner shall mean and refer the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Project, excluding those entities which have a security interest for the performance of an obligation.
33. Permanent Resident shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for a total of more than eight (8) weeks in any calendar year.
34. Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.
35. Plat Map shall mean and refer to the Record of Survey Map, Plat Map or Maps of AUBURN FIELDS DEVELOPMENT on file in the Office of the County Recorder of Salt Lake County, as amended or supplemented from time to time, which show the location of the units, Common Area and Facilities.
36. Project shall mean and refer to the AUBURN FIELDS DEVELOPMENT.

37. Project Documents shall mean and refer to the Declaration, By Laws, and Rules and Regulations governing the Project, as they may be amended or supplemented from time to time.

38. Property shall mean and refer to all of the land or real estate, improvements and appurtenances submitted in connection with this Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

39. Record of Survey Map shall mean and refer to the Plat Map.

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

41. Resident shall mean and refer to a person who lives, dwells, abides, lodges, or stays in a residence on a Unit.

42. Single Family Home or Residence shall mean and refer to both the architectural style of a residence and the nature of the residential uses and activities permitted therein.

## ARTICLE II

### SUBMISSION

The land herein above set forth is subject to the described easements and rights of way, together with all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying said real property.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Plat 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 Tract; 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.

## ARTICLE III

### COVENANTS, CONDITIONS AND RESTRICTIONS

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

1. Description of Improvements. The significant improvements for this Project shall include, up to Ninety-Five (95) town homes, which are comprised of a combination of 4-plexes, 5-plexes and 6-plexes. There may be additional homes added to the Association, but only to the extent that the property is immediately adjacent to the Project. The Buildings in the Project will be of a contemporary architectural style. There will also be certain Common Area and Facilities, including but not limited to roads, streets, parking areas, maintenance and utility buildings, walking path, sidewalks, walkways, utility systems, certain landscaping and green space. To the extent possible, electricity, natural gas, water and sewage disposal and garbage will be separately metered and billed to each unit. The HOA will own, operate and maintain the utility systems including without limitation, the sewer laterals. Billings received from the Sewer District will be the responsibility of the Home Owners Association. In addition, The HOA is responsible for the repair and the damages associated with a sewer lateral back up as long as the cause originated in the lateral line and not in the trunk line, the The Project will also contain other improvements of a less significant nature.

2. Description and Legal Status of the Property. The individual units shall be individually owned in fee simple and the Common Areas shall be owned by the Association.

3. Membership in the Association. A land owner's membership in the Association is mandatory and shall be appurtenant to the ownership of the Unit and may not be separated or partitioned therefrom.

4. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a unit shall describe the interest or estate involved in clear and precise legal terms.

All provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a unit. Neither the membership in the Association, nor the right of non-exclusive use of a Common Area shall be separated from the unit 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 run with the land and automatically accompany the transfer of the unit to which they relate.

5. Ownership and Use. Each Owner shall be entitled to the exclusive ownership and possession of his Unit and dwelling and an undivided ownership interest in the Common Areas and Facilities, subject 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 real property. There shall be no requirements concerning who may own land, it being intended that it may and shall be owned as any other property. This is a residential community and as such the Units shall be used only for residential purposes, except as set forth below. The Common Areas shall only be used in a manner consistent with the residential nature of the Project. In accordance with the By-Laws or Regulations adopted by the Board of Directors of the Association, any Member may delegate his right of enjoyment to the

Common Area and facilities to his family, tenants or contract purchasers who reside on the Property.

b) Title to the Common Area. The Common Area, as identified with particularity on the Plat Map, shall be owned by all of the land Owners as tenants in common.

c) Mandatory Association. Each purchaser of a Unit shall become a Member of the Association. Membership in the Association is mandatory.

d) Member's Easements and Rights of Way. Every Member of the Association shall, as an owner, have the right and nonexclusive easement to use and enjoy the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Unit, 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 rights and right to use the recreational facilities by an Owner for any period during which an Assessment against his Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations (it being understood that such suspension of rights shall not terminate the continuing obligation of such Owner for past and future Assessments against his Unit);

(3) The right of the Association to enact reasonable rules and regulations governing the use of the Common Area; and

(4) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes. During the Developer's period of development of the Project, any such dedication or transfer shall be effective only if approved in writing by the Declarant.

e) Rules and Regulations. The Board shall have the power and authority to adopt, amend or repeal administrative rules and regulations from time to time.

f) Restrictions and Limitations of Use. The use of the Units and dwellings is subject to the following guidelines, limitations and restrictions:

(1) Land Use. No Unit shall be used except for residential purposes provided, however, the Declarant may maintain a sales office in the model homes until all homes in the Project have been sold.

(2) Building Type. No Building shall be erected, altered, placed or permitted to remain on any Lot other than One (1) single-family dwelling selected specifically and solely from the models provided by the Developer.

(3) Parties Bound. The Project Documents shall be binding upon all Owners and Residents as well as their family members, visitors, guests and invitees when they enter the Project.

(4) Nuisance. It shall be the responsibility of each Owner and Resident to prevent the creation or maintenance of a nuisance in, on or about the Project. For purposes of this section the term "nuisance" shall be deemed to include, but shall not be limited to, the following:

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

b. The storage of any item, property or thing that will cause any Unit 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 Unit 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 Project;

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

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

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

g. Too much noise in, on or about any Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.; and

h. Too much traffic in, on or about any Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.



(5) Unightly 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 Project.

(6) Waste Management. All rubbish, trash, refuse, waste, dust, debris and garage shall be regularly removed from the project and shall not be allowed to accumulate thereon or to be stored in such as manner so as to be visible from the street. In addition, a contract for waste removal will be the responsibility of the Homeowner's Association. In connection therewith, each homeowner will be provided with a trash container which shall be placed at the curb on a designated day each week. The trash shall be removed by the maintenance personnel or as contracted by the Homeowner's Association. Following the emptying of each trash container, it is the responsibility of the Unit owner to remove the receptacle from the curbside on the same day.

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

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

(9) Temporary Structures. No Owner or Resident shall place upon any part of the Project any temporary structures including but not limited to trailers, or sheds, without the prior written consent of the Board. Anything to the contrary notwithstanding and until the occurrence of the Events referred to herein, the Developer may install and use temporary structures in the development of the Project and marketing of the Units. Furthermore, no trailer, unfinished basement, tent, shack, garage, barn or other out building or any structure of a temporary character shall be used on any Unit at any time as a residence either temporarily or permanently.

(10) Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to, change or alteration therein be made, nor shall any such structure be painted other than its original color until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing as to the harmony of external design, size and location in relation to surrounding structures and topography by the Board, or by an architectural committee comprised of Three (3) or more representatives as may be appointed by the Board. In the event said Board, or its design committee, fails to approve or disapprove such design and location within Thirty (30) days after said plans and specifications have been submitted, approval will not be required and this article will be deemed to have been fully satisfied. In order to obtain review by the architectural committee or the Board of Directors, the plans and specifications referred to above must be submitted by personally delivering them to One (1) of the Members of the architectural committee or, if such committee is not then in existence, by personally delivering said plans to the President, Vice President or Secretary of the Association.

(11) Trees, Shrubs, Bushes and Fences: Maintenance of Proper Sight Distance at Intersections. All yard areas are landscaped around each Unit. Owners shall not construct, build or otherwise erect any fencing, regardless of the nature thereof, on, in or around the yard of the Unit. The Association shall have the authority to remove the same. Furthermore, each Unit, including improvements thereon, shall be maintained by the Owner in an attractive condition. In the event an Owner of any Unit in the Properties shall fail to maintain the premises and the improvements situated thereon as required, the Board, by Two-Thirds (2/3rds) vote of the Board, shall have the right, through its agents and employees, to enter upon said Unit and to repair, maintain and restore the Unit and the exterior of the Buildings and any other improvements erected thereon, the costs of such exterior maintenance shall be added to and become part of the individual Assessment to which such Unit is subject. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any owner or Resident in, on or about the Common Areas without the prior written consent of the Board. The Board may alter or remove any objects which create a dangerous or potentially dangerous condition, or have been planted or placed in a manner which violates this subsection.

(12) Energy Conservation Equipment. No solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project without the prior written consent of the Board.

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

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

a. The parking rules and regulations adopted, from time to time, by the Board;

b. It shall be required, unless modified by the board, that all motor vehicles or trailers, including, but not limited to, any automobile, truck, van or other transportation device of any kind shall be parked in the designated parking stalls which are provided,

(15) Aerials, Antennas, and Satellite Systems. No aerials or antennas (ham radio or otherwise) shall be erected, maintained or used in, on or about any Unit, outdoors and above ground, whether attached to or on top of any Building, Unit, structure, or otherwise, within the Project without the prior written consent of the Board. Small satellite dishes are allowed, without Board approval, so long as they are attached to the rear of the house (including the roof) and are not visible from the front street. In making its decisions, the Board shall abide by and be subject to all relevant local state and federal

laws, including but not limited to all FCC guidelines, rules and regulations as they may be amended or supplemented from time to time.

(16) Windows and Window Coverings. No aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any dwelling or garage.

(17) Pets. Up to two (2) domestic pets per Unit are allowed unless a variance is granted in writing by the Board. Residents with a pet or pets shall abide by the pet rules and regulations adopted, amended or supplemented by the Board from time to time. Residents with pets in the Common Area shall keep them on a leash at all times and shall clean up immediately after their pets. Pets which constitute a nuisance will not be tolerated in the Community and for purposes of this subsection, pets in the Common Area without a leash, pets in the Common Area whose owners do not immediately clean up after them, or dogs who bark, howl, whine or scratch unreasonably shall be deemed to be a nuisance.

(18) Signs. No sign of any kind shall be displayed to the public view on any Unit except One (1) sign of not more than Five (5) feet square advertising the property for sale or signs used by the Declarant or a builder to advertise the property during the construction and sale.

(19) Insurance. Nothing shall be done or kept in, on or about any Unit or the Common Area which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Project over what the Association, but for such activity, would pay.

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

(21) Damage or Waste. No Owner or Resident shall cause, or allow to be caused, damage to the Common Area or another Unit. No Owner or Resident shall commit, or allow to be committed, waste to the Common Area or another Unit. Each owner, by virtue of accepting a deed to a Unit or other document of conveyance, and each Resident, by virtue of residing in the Project, shall indemnify and hold the Association, Board and the other owners harmless against all loss resulting from any such damage or waste caused by that owner or Resident, their family members, guests, visitors or invitees; provided, however, that any guest, visitor or invitee of the Declarant shall not under any circumstances be deemed to be the guest, visitor or invitee of any other owner or Resident.

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

6. Leases. Any agreement for the leasing, rental, or occupancy of a Unit or dwelling (hereinafter in this Section referred to as a "lease") shall be in writing and a copy thereof shall be delivered to the Association before the term of the Lease commences. Every lease shall provide that the terms of such lease shall be subject in all respects to the provisions of the Project Documents. Said lease shall further provide

that any failure by the Resident thereunder to comply with the terms of the foregoing documents shall be a default under the lease. If any lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the lease and binding on the owner and Resident by virtue of their inclusion in this Declaration. No owner shall be permitted to lease his/her Unit for transient, hotel, seasonal, or other similar purposes. The minimum initial term of any lease shall be at least six (6) months. Daily or weekly rentals are prohibited. Any Owner who shall lease his Unit shall be responsible for assuring compliance by the Resident with the Project Documents. Failure by an owner to take legal action, including the institution of a forcible entry and unlawful detainer proceeding against his Resident who is in violation of the Project Documents within ten (10) days after receipt of written demand so to do from the Board, shall entitle the Association to take any and all such action including the institution of proceedings in forcible entry and unlawful detainer on behalf of such owner against his Resident. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the owner or Resident for any eviction under this Section that is made in good faith. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid to it by such Owner. Failure by such owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy an Individual Assessment against such owner and his Unit for all such expenses incurred by the Association. In the event such Assessment is not paid within thirty (30) days of its due date, the Board may resort to all remedies of the Association for the collection thereof. other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

7. Easements: Drainage, Support, Maintenance and Repair There are hereby RESERVED and the Association is hereby GRANTED the following easements and rights of way:

a) A non-exclusive easement over, across, through, above, over, and under the Common Area for the operation, maintenance, repair, servicing, and regulation of the Common Area as well as common utilities and systems (e.g., power, water, sewer and gas lines) amenities and facilities; and

b) A reciprocal easement on, over, above, under, through and across all Buildings, Units and the Common Area for the drainage of surface waters on, over, under, through and across the Project. No structure or other obstacle shall be erected, placed or permitted to remain on any Unit in any way as to interfere with the established drainage pattern over the Unit to and from adjoining land, or, in the event it becomes necessary to change the established drainage over a Unit, adequate provision shall be made for proper surface drainage. The Declarant shall establish a subdrain and storm drainage system designed to serve the entire Project (the "Master Subdrain and Storm Drain System"). No Unit Owner shall interfere with the Master Subdrain and Storm Drain System established by the Declarant, or its successors or assigns. Each Unit Owner shall be responsible to develop his Unit in a manner consistent with the Master Subdrain and Storm Drain System, and so as not to detract therefrom or interfere therewith, or the Established Drainage Pattern on any other Unit in the Project. No changes to the Established Drainage Pattern on any Unit shall be permitted without the prior written consent of the Board. 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 Unit is conveyed to a home purchaser by the Declarant, its successor or assign. The cost of all improvements, maintenance, repairs and replacements of the subdrain or storm drainage system located within the boundaries of any Unit shall be the responsibility of the Unit Owner. The cost of all improvements, maintenance, repairs and replacements of the subdrain and storm drainage system located in the Common Area shall be the responsibility of the Association. If the Association or the Unit owners fail to properly manage, maintain or replace the subdrain and storm drainage system, Salt Lake County (or other governing body) shall have the right, but not the obligation to maintain the systems, and to charge the cost thereby incurred to the Association. 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 runoff unless the consent of the Development Services Division of Salt Lake County, or its successor, has first been obtained in writing. All governing governmental bodies are hereby made a party to the covenants established by this Declaration for the sole purpose of protecting and preserving the use of the common storm drainage system and structures that serve the Project. Salt Lake County (or other government bodies) shall not be a Member of the Association and shall have no vote in the management, operation or regulations of its affairs.

8. Liability of Owners and Residents For Damages. Any Owner, by virtue of accepting a deed to a Unit or other document of conveyance, or Resident, by virtue of residing in the Project, shall be liable to the Association, other owners or Residents for damages to person or property in the community caused by his negligence or the negligence of his family members, guests, visitors or invitees.

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

10. Board of Trustees. The Association shall be managed by a Board of Trustees which shall be comprised of five (5) Unit Owners. Until the happening of the Events, the Declarant shall have the exclusive and irrevocable right to appoint all of the Members of the Board and their successors or replacements. At the first Annual Homeowners Meeting after the occurrence of the Events, the Members of the Board shall be elected by the Owners. To provide continuity of management, three (3) of the Members shall be elected for a two (2) year terms and the other two (2) Members shall be elected for a one (1) year term. Thereafter, all Members shall be elected for two (2) year terms.

a) Qualification. To qualify, a Member of the Board must be an individual owner or the legal representative of a land owner.

b) Vacancies. Any vacant seat on the Board shall be filled with a Member elected or appointed to serve a two (2) year term.

c) Dismissal. Any Board Member who fails on three (3) successive occasions to attend Board meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Board meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining Board Members shall elect a replacement to sit on the Board until the next meeting of the Association.

d) Removal of Board Member/Declarant's Rights Except for Board Members appointed by the Declarant before the occurrence of the Events, Board Members may be removed at any time by the affirmative vote of a Majority of the Members of the Association. A replacement to serve the remainder of the removed Member's unexpired term shall be elected at the same meeting.

e) Term. Unless he forfeits or otherwise loses his seat as herein provided, a Member shall serve on the Board until his successor qualifies and is properly elected by the Association.

f) No Compensation. Board Members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Board business and approved by the Board.

11. Board Officers and Agents. The Board shall perform its functions through those five (5) Members who are elected as officers by the Board and through such agents or employees as the Board may appoint. There shall be a President and Secretary. Any Board officer, agent, or employee may at any time be removed, with or without cause, by the vote of a majority of the Board Members. Provided, however, if a Member of the Board is removed as an officer, he shall continue to be a Member of the Board.

12. Board Meetings. A regular meeting of the Board shall be held immediately after the adjournment of each annual owners' meeting or at such other time as the Members of the Board may decide. Other regular meetings shall be held at periodic intervals (no longer than monthly) at such time and place as the Board may determine. No notice need be given of regular Board meetings. Special Board meetings shall be held whenever called by the President or by any three (3) Members of the Board. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Board Member at least twenty-four (24) hours before the time fixed for the meeting. The propriety of holding any meeting which is attended by all Board Members may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Board meeting shall consist of a Majority of all the Members then in office.

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

a) To Enter. The power and authority to enter upon any Unit to make outside repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the Residents.

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

c) Execute Documents. The authority to execute and record, on behalf of all owners, any amendment to the Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment.

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

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

f) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least a majority of the Members in the Association.

g) To Purchase. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least a majority of the Members in the Association.

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

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

j) Assignment or Leasing of Open Common Area Parking Spaces. The authority to charge reasonable user fees for Common Area and Facilities, and to assign or lease available Common Area parking spaces, if any to Residents.

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

14. Delegation of Management Responsibilities. The Board may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, independent contractors, through service contracts, or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of more than thirty (30) days and no such contract shall be for a term greater than one (1) year, unless otherwise deemed prudent by an 80% approval of the Board.

15. Owners Meetings. The Association Members shall meet as follows:

a) Annual Meeting. The annual meeting of the owners shall be held at 7:00 o'clock p.m. on the second Tuesday in November of each year. Whenever such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be at the location specified in the notice of meeting. At least ten (10) but not more than thirty (30) days before the date of the annual meeting, a written notice thereof shall be personally delivered or

mailed postage prepaid to each person who appears as an Owner, at his last known address. The notice shall state the location, date, time, place, and general purpose of the meeting.

b) Special Meetings. Special meetings of the owners may be called by the President, by any three (3) Members of the Board, or by Unit owners holding at least twenty five percent (25%) of the undivided ownership interest in the Common Area. At least two (2) but not more than thirty (30) days before the date set for a special meeting, written notice thereof shall be given in the manner described in the immediately preceding Paragraph.

c) Waiver of-Notice. No notice of any owners meeting shall be required if a waiver of such notice is signed by all of the owners. Whenever all of the owners meet in person or by proxy such meeting may not be challenged on grounds of inadequate notice.

d) Quorum. The presence of a majority of the undivided ownership interest in the Project entitled to cast a vote shall constitute a quorum for the transaction of business at any Owner's meeting.

(1) Quorum Not Present. If a quorum is not present at any Owners meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours and no later than thirty (30) days, after the time set for the original meeting.

(2) Quorum at Rescheduled Meeting. Those Members present at the rescheduled meeting and entitled to vote shall constitute a quorum at the rescheduled meeting.

(3) Percentage Approval Requirement. In any situation in which this Declaration requires the affirmative vote of a certain percentage of the total ownership interest in the Project for authorization or approval of a matter, the affirmative approval of that percentage of the all of Unit owners, who must either be present at the meeting in person or by proxy, or, in the alternative, who have signed a separate written consent, is required for authorization or approval of the item, regardless of the quorum requirements.

16. Classes of Membership & Voting Allocations. The Association shall have two (2) classes of membership -- Class A and Class B, described more particularly as follows:

a) Class A. The Class A Members shall be all owners with the exception of the Declarant. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

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

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



(3) Multiple Owners. When more than one (1) person or entity holds such interest in a Unit, the vote for such Unit 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 Unit shall be suspended in the event more than one (1) person or entity seeks to exercise it.

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

b) Class B. The Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and the sale of Units, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to One Hundred (100) votes per Unit owned. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (which are hereinafter referred to as the "Events"):

(1) Units Sold. Thirty (30) days following the date that one hundred percent (100%) of the Units have been sold;

(2) Seven Years. Seven (7) years from the date following the first conveyance of a Unit to a purchaser after the effective date of this Declaration; or

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

From and after the happening of the Events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Unit owned. At such time, the Class A Members shall schedule a meeting, in the manner described in the By Laws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association. Provided, however, if the Class B membership terminates for the reasons set forth in Subsection b(1) of this Section, and if Declarant thereafter causes one or more additional parcels of land to be annexed as provided hereinafter, then the Class B membership shall be reinstated and shall continue until the happening of the first to occur of the events set forth in Subparagraphs (1), (2) and (3) of this Section.

17. Lists of Unit Owners, Eligible-Mortgagees, and Eligible Insurers or Guarantors. The Board shall maintain up-to-date records showing: (a) the name of each person who is an owner, the address of such person, and the Unit 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 (c) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Unit 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 Unit, either the transferor or transferee shall furnish the 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 Salt Lake County, Utah. The Board may for all purposes act and rely on the information concerning Unit 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 Unit owned by such person unless the Board is otherwise advised in writing.

18. Capital Improvements and Table. The Board shall prepare a Table of Capital Improvements, which shall contain a list of foreseeable expenditures for Capital Improvements within the Area of Common Responsibility. The Table shall be included in every annual budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Board for the replacement of capital assets as they age. Expenditures by the Association for Capital Improvements to the Project shall be subject to and governed by the following:

a) Board Discretion/Expenditure Limit. Capital Improvements to the Project which cost ten percent (10%) or less of the Total Annual operations Budget and do not materially alter the nature of the Project, may be authorized by the Board alone.

b) Homeowner Approval/Expenditure Limit. Any Capital Improvement, the cost of which will exceed such amount, 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 Project. Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least two thirds (2/3rds) of the undivided ownership interest in the Project.

19. Operation, Maintenance and Alterations. The Units and Common Area shall be maintained by the Unit 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 Common Area and Facilities, including, but not limited to, all the common utility services such as power, light, fixtures, and all landscaping as set forth with more particularity below.

b) Area of Personal Responsibility. Each Unit Owner shall maintain, repair and replace, as needed, his Unit, individual utilities, including but not limited to all power, water, gas, sewer, telephone, and television lines servicing only his Unit, windows, doors, garage doors and garage door systems, heating, cooling, fences, fixtures, patios, decks, etc.

c) Landscaping. The Association shall maintain, repair and replace as needed all Common Area and front yard landscaping throughout the entire Project, including but not limited to all green space, grass, sod, ground cover, flower beds, plant beds, trees, bushes, shrubs, and sprinkling systems, which owners or Residents shall not modify, change, or alter without the express prior written consent of the Board. All Common Area landscaping in the Project shall be maintained and cared for in a manner consistent with Community Standards and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the Board from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be properly pruned and trimmed. All landscaping shall be tasteful,

so as not to affect adversely the value or use of any Unit, or to detract from the uniform design and appearance of the Project.

d) Snow and Ice Accumulations. The Association shall remove all ice and snow accumulations from the Common Area and streets. Each land owner shall be responsible for his individual driveways and sidewalks.

e) Utilities. The Association shall provide those utility services not separately metered and billed to the individual owners by the provider; provided, however, the Declarant may elect to provide electricity to certain Common Area lamp posts from an individual Unit in which case the Unit owner shall be entitled to a monthly credit. In addition, notwithstanding the ownership of the Common Area by the Association, it is expressly understood that Declarant shall be entitled to receive all payments and refunds that may be made by any utility company, special improvement district, or other entity or governmental agency on account of the cost borne by Declarant towards the installation on the properties of water lines, sewer lines and other utility systems.

f) Standard of Care/General. The Property shall be maintained in a usable, clean, functional, attractive and good condition, consistent with Community Standards.

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

h) Alterations to the Common Area. Anything to the contrary notwithstanding and until the occurrence of the Events, the Declarant may make changes to the Common Area and Facilities without the consent of either the Association, Board or Owners; provided, however, 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 express written consent of the Board.

20. Common Expenses. Each Owner, upon receipt of a deed to a Unit or other document of conveyance, shall pay his Assessments to the Association subject to and in accordance with the restrictions set forth below; provided, however, anything to the contrary notwithstanding, the Developer shall not be obligated to pay Assessments until such time as any residential structure or building is substantially completed and a permanent certificate of occupancy has been issued or, in the alternative, the Developer elects in writing to commence payment, whichever first occurs.

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

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. Each owner, by

acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed.

c) Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Board shall prepare and deliver to the Owners a proposed Budget 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 to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and Facilities, 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 is required or permitted to maintain, common lighting and heating, water charges, carpeting, painting, repairs and maintenance of the Common Areas and Facilities and replacement of the elements and components thereof that must be replaced on a periodic basis, wages for Board employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the owners under and by reason of this Declaration.

d) Apportionment. The common profits of the Project shall be distributed among, the Common Expenses shall be charged to and the voting rights shall be allocated among the Unit Owners equally.

e) Approval of Budget and Assessment. 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 Assessment schedule, or if the Board fails for any reason to establish the Budget and Assessment schedule for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessment schedule in affect for the then current year shall continue for the succeeding year.

f) Payment of Assessments. The Board has the sole authority and discretion to determine how and when the annual Assessments are paid, and to amend, modify, change or supplement that schedule from time to time.

g) Personal Obligation of Owner. Each Unit Owner shall pay his Assessments and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a executory contract of sale, uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Unit pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this section, the term "Owner" shall mean and refer jointly and severally to: the owner of both the legal and equitable interest in any Unit; the owner of record in

the offices of the County Recorder of Salt Lake County, Utah; and both the Buyer and Seller under any executory sales contract, uniform real estate contract, land sales contract, or other similar instrument. In addition, the Annual and Special Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such Assessment is made.

h) Equitable Changes. If the aggregate of all of the monthly Assessment payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Board may from time to time effect an equitable change in the amount of said payments provided the owners are given at least thirty (30) days written notice of any changes.

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

j) Reserve Accounts. The Board shall establish and maintain at least two (2) reserve accounts: one to pay for unexpected operating expenses and the other to pay for Capital Improvements.

k) Acceleration. Assessments shall be paid in the manner and on dates fixed by the Board who may, at its option and in its sole discretion, elect to accelerate the entire annual Assessment for owners who have failed to pay their monthly Assessment in a timely manner. If, however, the Assessment is accelerated and an owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

l) Statement of Assessments Due. Upon written request, the Board shall furnish to any owner a statement of Assessments due, if any, on his Unit. Failure to provide the certificate within thirty (30) 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 Fifteen and No/100 Dollars (\$15.00) for the issuance of such certificate.

m) 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 and each owner, by accepting a deed to a Unit or other document of conveyance, hereby waives such homestead exemption as to the Association.

n) Suspension of Right to Vote for Non-Payment. At the discretion of the Board, the right of an owner to vote on issues concerning the Association may be suspended if the owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

21. Special Assessments. In addition, the Association may levy Special Assessments in any year, subject to the following:

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

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

22. Specific Assessments. If a Unit Owner may accept or reject the benefit, then the Board shall also have the power to specifically assess the owners in a particular area as follows:

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

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

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

23. Individual Assessments. Individual Assessments may be levied by the Board against a Unit and its owner to reimburse the Association for:

a) costs and expenses incurred in enforcing the Project Documents;

b) costs and expenses associated with the maintenance, repair or replacement of Common Area for which the Unit Owner is responsible;

c) any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents; and

d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

24. Collection of Assessments. The HOA (not a mortgagee) shall be solely responsible for the collection of all assessments. 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 deemed to be delinquent.

c) Lien. If any Unit Owner fails or refuses to make any payment of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property. A notice of lien may be recorded in the office of the County Recorder of Salt Lake County, but shall only be necessary in order to establish the priority of the lien.

d) Late Fees and Default Interest Rate. 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. The Board may, in its sole discretion, change the amount of the late fee or default interest rate or waive late Assessments and accruing interest, but is not required to do so.

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

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 obtain a personal judgment against him for unpaid Assessments and Additional Charges, to foreclose the lien securing the debt in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed, or both.

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

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 to take some action or perform some function required to be taken or performed by the Association or Board under the Project Documents, 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 in the following order: 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.

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 Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

k) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage and shall not constitute default under an insured mortgage. Sale or transfer of any Units shall not affect the Assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Unit from liability for any Assessments thereafter becoming due or from the lien thereof.

l) Exempt Property. All property dedicated to, and accepted by a local public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah shall be exempt from the Assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said Assessments.

m) Appointment of Trustee. If the Board elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the owner by accepting a deed to the Unit 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.

n) Attorney in Fact. Each Owner, by accepting a deed to a Unit or other document of conveyance, hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Unit, if the Unit 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 tenant or lessee, against rent due, for the amount of money paid to the Association.

25. Date of Commencement of Annual Assessments - Due Dates. The Annual Assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of the Common Area. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Unit at least thirty (30) days in advance of each Annual Assessment. Written notice of the Annual Assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for reasonable charge, furnish a certificate by an Officer of the Association setting forth whether the Assessments on a specified Unit have been paid. A properly executed certificate of the Association, as to the status of Assessment on the Unit, is binding upon the Association as to the date of its issuance.

26. Liability of Board. The Association shall indemnify every officer and Member of the Board against any and all expenses, including but not limited to attorney's Assessments reasonably incurred by or



imposed upon any officer or Member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he may be a party by reason of being or having been an officer or Member of the Board. The officers and Members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and Members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Members of the Board may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and Member of the Board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or Member of the Board, or former officer or Member of the Board, may be entitled.

27. Insurance. The Board 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 casualty policy. This additional coverage may be added by the Board as it deems necessary in its best judgment and in its sole discretion.

b) Flood Insurance. If any part of the Project's improvements are in a Special Flood Hazard Area -- which is designated as A, AE, AH, AO, 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 first class 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 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 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 or the Association.

(2) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Board'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, 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 Units, plus reserve funds.

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

a. they shall name the Board, 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 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 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 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 Common Area insurance coverage:

(1) Quality of Carrier. A "B" or better general policyholder's rating or a 11611 or better financial performance index rating in Best's Insurance Reports, an "All or better general policyholder's rating and a financial size category of "VIII or better in Best's Insurance Reports -- International Edition, an "All or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBB" 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 elements in the Project.

(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 Unit Owners of AUBURN FIELDS, a Planned Unit Development Project 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 Project, 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) Waiver of Subrogation. A waiver of the right of a subrogation against owners individually.

(8) Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual owner.

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

(10) Individual Insurance. Each Owner and Resident shall purchase and maintain adequate liability and property insurance on his 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.

(11) 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.

(12) Prompt Repair. Each owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Unit, the Owner shall

proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

(13) 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 Unit, and may be enforced by them.

(14) Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class subdivisions 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 Project has any central heating or cooling.

(15) 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, the Association, V.A., FHA, FNMA, or their designees.

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 Board, the Association, an owner, FNMA, or the borrowers) from collecting insurance proceeds.

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

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

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

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

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

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

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

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

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

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

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

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

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

c) Restoration of the Project. Restoration of the Project shall be undertaken by the Board promptly without a vote of the owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by owners collectively holding at least sixty-seven percent of the Project's undivided ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on units which have appurtenant at least Fifty-One Percent (51%) 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 has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

e) Excess Insurance. If the insurance proceeds condemnation awards, or payments in lieu of condemnation actually received by the Board or Association exceed the cost of Restoration when Restoration is undertaken, 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 Unit 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 Units 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 Units will not be the subject of Restoration (even though the Project will continue as a planned unit development) 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 units.

h) Sale of Project. Unless Restoration is accomplished as set forth above, the Project 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 Board to the owners in proportion to their respective undivided interests in the Common Areas. Payment to any

Owner whose Unit is then the subject of a Mortgage shall be made jointly to such owner and the interested Mortgagee.

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

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, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as herein above 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.

29. 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 the Board obtaining from owners who collectively hold the required percentages, with or without a meeting, consents in writing to such transaction, subject to the following conditions:

a) Ninety-Day Limit. All necessary consents must be obtained prior to the expiration of ninety (90) days from the time the first written consent is obtained; and

b) Change In Owner. Any change in ownership of a Unit 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.

30. Mortgagee Protection. The lien or claim against a unit for unpaid Assessments levied by the Board or by the Association pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Unit for such unpaid Assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit 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 Unit from liability for, nor such Unit the lien of any Assessments becoming due thereafter.

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

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

d) Management Contract. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause, penalty or severance charge, upon at least Thirty (30) days prior written notice to the other party thereto.

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

(1) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit 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 Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of Sixty (60) days.

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

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

31. Amendment. Subject to the condition set forth herein, this Declaration may be amended subject to the following:



a) Consent of the Owners. The affirmative vote of at least Seventy-Five Percent (75%) 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 recording of an instrument executed by the Board. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained; and

b) Consent of Eligible Mortgagee. The consent of at least Fifty-One percent (51%) of the Eligible Mortgagees shall be required for any amendment which would terminate the legal status of the Project; or 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:

- (1) voting rights;
- (2) increases in assessments that raise the previously assessed amount by more than Fifty Percent (50%), assessment liens, or the priority of assessment liens;
- (3) reductions in reserves for maintenance, repair, and replacement of the Common elements;
- (4) insurance or fidelity bonds;
- (5) limitations and restrictions on the right to use of the Common Areas or to mortgage or convey an interest in the Common Area or any part thereof;
- (6) responsibility for maintenance and repairs;
- (7) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (8) the boundaries of any Unit;
- (9) the percentages of ownership interest in the Common Areas;
- (10) convertibility of a Unit into Common Areas or Common Area into a Unit;
- (11) the imposition of any right of first refusal or similar restriction on the right of an owner to sell, transfer, or otherwise convey his Unit;
- (12) express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and

(13) the requirement that the Project be CD professionally managed rather than self managed. 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.

Except for the secretary of Veterans Affairs, any Eligible Mortgagee who does not deliver to the Board 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 Project as a Planned Unit Development Project if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

32. Notice and Hearing. In the event the Board or a Unit Owner claims another Unit Owner or Resident has violated the Project Documents, before any sanction, citation, penalty, or Individual Assessment becomes final, the Owner or Resident about whom the complaint has been made shall be entitled to the following rights of due process:

a) Notice. Written notice specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the Member will have an opportunity to be heard by the Board. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the Member at the address given by the Member to the Board for the purpose of service of notice or to the address of the Member's Unit if no other address has been provided. Any address may be changed from time to time by giving written notice to the Board.

b) Costs & Assessment. If the violation, or the failure to correct or remedy a violation, results or may result in the expenditure of funds, the notice shall also state that the Board may vote to assess the adverse party, levy a fine, or impose other sanctions if the Board finds that a violation has occurred.

c) Final Determination. After the hearing has taken place, the Board shall (1) determine whether a violation has occurred and, if so, may impose a fine or issue sanctions which shall become effective not less than five (5) days after the date of the hearing; or (2) take such other action as may be appropriate. The determination of the Board shall be final. However, nothing herein shall be construed to prevent the Board from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing Notice and Hearing.

33. Declarant's Sales Program. Notwithstanding anything to the contrary, until the occurrence of the Events, neither the owners, the Association nor the Board shall interfere with the completion of

improvements and sale of all remaining Units, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Units owned by Declarant:

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

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

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

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

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

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

36. Working Capital Fund. A working capital fund shall be established by the Declarant to meet unforeseen expenditures or to purchase any additional equipment or services. The initial working capital fund shall be in an amount equal to two (2) months of estimated common assessments for each Unit. Each Unit's share of the working capital fund shall be collected either at the time the sale of any Unit is closed or when control of the Project is transferred to the Unit Owners, whichever first occurs. Any amounts paid into the working capital fund shall not be considered as advance payments of regular monthly assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Unit Owners. The Declarant is prohibited from using the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. When a Unit

is sold, however, the Declarant may reimburse itself for monies it has paid the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when the Unit is sold.

37. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select Members of the Board, and to transfer management of the Project to the Association. If and when Declarant elects to do so, Declarant shall send written notification to each owner of the effective date of the transfer (the "Transfer or Transition Date") at least Fifteen (15) days prior thereto. Thereupon, the owners shall call a meeting to elect the Members of their own Board to take office as of the Transfer Date. Declarant covenants to cooperate with the owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Area expenses of the Board incurred prior to the Transfer Date to be paid in full on or before such date.

38. Certain Provisions Applicable to Declarant. Anything to the contrary notwithstanding, for so long as Declarant continues to own any of the Units in the Project, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided.

a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.

b) No amendment may be made to the Declaration without the written consent of Declarant until the occurrence of the Events.

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

(a) Units. Each Unit which an owner has contracted to purchase, the Building within which a Unit is contained or is to be contained, shall be substantially constructed, and ready for use or occupancy (as the case may be); and

(b) Common Area. On the land submitted to the Declaration hereby or by any Supplemental Declaration, all planned amenities, landscaping, green space, sidewalks, parking facilities, roads, streets, fences, outdoor lighting, and utility lines and conduits adjacent to the Unit or Building in which a Unit is located, and necessary for its use shall be substantially completed.

40. Expansion of the Project.

(a) Reservation of Option to Expand. Declarant hereby reserves the option to expand the Project to include additional phases and Units in the Project. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire Twenty (20) years from the date following the first conveyance of a Unit in the Project to a Unit purchaser after the effective date of this Declaration, unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said Twenty (20) years. Such right may be exercised without first obtaining the consent or vote of Unit owners and shall be limited only as herein specifically provided. Such Units shall be located on any or all portions of the Additional Property.

(b) Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Salt Lake County, Utah, no later than Twenty (20) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Units, together with supplemental Map or Maps containing the same information with respect to the new Units as was required on the Map with respect to the Phase I Units. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

(c) Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the Salt Lake County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then owners of Units in the Project as it existed before such expansion the respective undivided interests in the new Common Areas added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any unit in the Project as it existed, interest so acquired by the owner of the Unit encumbering the new Common Areas added to the Project as a result of such expansion.

(d) Declaration Operative on New Units. The new Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Units therein shall be subject to ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said office of the Salt Lake County Recorder.

(e) Right of Declarant to Adjust Ownership Interest in Common Areas. Each deed of a Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentages in the Common Areas set forth in supplemental or Amended Declaration. The proportionate interest of each Unit Owner in the Common Areas after any expansion of the Project shall be an undivided interest of the Project as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas in accordance with Supplemental or Amended Declarations recorded pursuant hereto and each deed of a Unit in the Project shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Units may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than Twenty (20) years following the first conveyance of a Unit in the Project after the effective date of the Declaration.

Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

(f) Other Provisions Concerning Expansion. If the Project is expanded as hereinbefore contained, then it is further provided that:

(1) All or any part of the Additional Land may be added to the Project without any limitations whatsoever save and except that all additional Units created must be restricted to single-family residential housing consistent with existing development.

(2) Portions of the Additional Land may be added to the Project at different times without any limitations.

(3) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Land through the easement areas as shown on the Map. The Association of Unit Owners shall not allow anything to be built upon or interfere with said easement areas.

(4) No assurances are made concerning:

(a) The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Project.

(b) Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Units will be comparable to the Phase I facilities on a per Unit basis and will be of a similar quality of materials and construction to Phase I and will be substantially completed prior to annexation.

(c) Whether any Units created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Units will be constructed of an equal or better quality of materials and construction than the Units in Phase I.

(d) Type, size, or maximum number of Limited Common Areas which may be created within any portion of the Additional Land added to the Project.

(5) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to:

(a) the submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration;

(b) the creation, construction, or addition to the Project of any additional property;

©) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or

(d) the taking of any particular action with respect to the Additional Land, the Project, or any Land.

(f) FHA/VA Approval. Any act of annexing additional property, dedicating of the Common Area or amending of this instrument shall require the prior approval of the Federal Housing Administration ("FHA") or the Veteran's Administration ("VA") provided that both of the following conditions exist at the time of such act:

(1) There is still a Class B membership; and

(2) The FHA has insured or guaranteed any financing of any of the Units or then holds itself out as willing to do so.

41. 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.

42. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each owner or Resident of a Unit shall comply with, and all interests in all Units 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 Unit in the Project, the party acquiring such interest consents to, and agrees to be bound by, and is empowered with the authority to enforce, each and every provision of this Declaration.

43. Enforcement and Right To Recover Attorney's Assessments. The Association, Board, or any Unit owner may take action, at law or in equity, to enforce the terms, covenants, conditions or restrictions of the Project Documents. Should the Association, Board or a Unit Owner be required to take action to enforce the Project 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 attorney's fee, which may arise or accrue. Failure to enforce any such term, covenant, condition or restriction herein contained, shall in no event constitute or be deemed a waiver of the right to do so thereafter.

44. Mechanics Liens. Mechanics liens shall be filed in the office of the County Recorder as follows:

a) Association/Goods or Services. Mechanics liens for labor, materials or supplies purchased by the Association shall be filed against all Unit Owners in the Project and their appurtenant interest in the Common Area, and shall be indexed in the public records under the name of the Association and Community. If the Association has encumbered the Common Areas and thereafter defaults on its obligations, the lienholder must exercise its rights against the Common Areas before it may proceed against any Unit. Any Owner wishing to release that lien as to his Unit may pay the pro rata share of the total amount of the lien and that shall be sufficient to release the lien against his unit.

b) Unit Owner/Goods or Services. Mechanics liens filed for labor, materials or supplies benefitting a particular Unit shall be filed against that Unit and its appurtenant interest in the Common Area.

c) Constructive Consent. Any person or entity who elects to perform labor or provide materials at this Project agrees to be bound by and subject to the terms of this Section.

45. Agent for Service of Process. After the occurrence of the Event, the President of the Association shall be the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent shall be James F. Allred and the initial office of the Registered Agent shall be 5151 South 900 East, Salt Lake City, Utah 84117.

46. Declarant's Reservation of Easement. Declarant hereby reserves an easement and right of way across, over, under and through the Common Areas for purposes of vehicular and pedestrian access to the Additional Land or other real property Declarant or its successors or assigns may own or hereafter purchase adjacent to the Project.

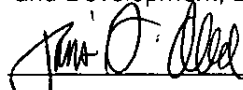


47. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED the day and year first above written.

DECLARANT:  
AUBURN FIELDS, LLC

BY: Real Estate Investments  
and Development, LLC, Co-Manager



James F. Allred, Manager

BY: JLD Development, LLC, Co-Manager



Jaren L. Davis, Manager

STATE OF UTAH )  
 )ss:  
COUNTY OF SALT LAKE )

On the 16<sup>th</sup> day of July, 2007, personally appeared before me James F. Allred, manager of Real Estate Investments and Development, LLC and Jaren L. Davis, manager of JLD Development, LLC who by me being duly sworn, did say that they are the Managers of AUBURN FIELDS, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said company pursuant to its Articles of Organization or a resolution of its Members, and James F. Allred and Jaren L. Davis duly acknowledged to me that said company executed the same.

  
NOTARY PUBLIC

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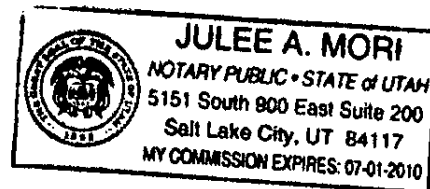


EXHIBIT "A"

Parcel 1:

Beginning at a point which is East along the Section line 731.96 feet from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian and running thence West 140.86 feet; thence North 646.50 feet; thence East 140.86 feet; thence South 646.50 feet to the point of beginning.

Less the following deeded to Salt Lake County: Beginning at a point which is East along the Section line 731.96 feet from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence West 140.86 feet; thence North 33.00 feet; thence East 140.86 feet; thence South 33.00 feet to the point of beginning.

Parcel 2:

Beginning at a point which is East 731.96 feet along the Section line and North 36.25 feet from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 140.86 feet; thence North 309.24 feet; thence West 140.86 feet; thence South 309.24 feet to the point of beginning.

Less and excepting:

Beginning at a point which is East 731.96 feet along the Section line from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 16.5 feet along the Section line; thence North 345.49 feet; thence West 16.5 feet; thence South 345.49 feet to the point of beginning.

Parcel 3:

Beginning at a point which is East along the Section line 872.82 feet from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence East 140.86 feet; thence North 646.50 feet; thence West 140.86 feet; thence South 646.50 feet to the point of beginning.

Less and excepting that portion conveyed to Salt Lake County: Beginning at a point which is East along the Section line 872.82 feet from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence East 140.86 feet; thence North 53.00 feet; thence West 140.86 feet; thence South 53.00 feet to the point of beginning.

Parcel 4:

Beginning at a point which is East along the Section line 1013.68 feet from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian and running thence East 140.86 feet; thence North 646.50 feet; thence West 140.86 feet; thence South 646.50 feet to the point of beginning.

Less and excepting any portion lying within the bounds of 11800 South Street.

Parcel 5:

Commencing at a point 1154.54 feet East and 337.25 feet North from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian; thence North 309.25 feet; thence East 140.86 feet; thence South 309.25 feet; thence West 140.86 feet to the point of beginning.

Parcel 5A: (Easement Estate Interest)

Together with a non-exclusive easement for pedestrian and vehicular access over the following described property:

Commencing at a point 1295.4 feet East and 664.5 feet North from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian; thence South 664.5 feet to the center of 11800 South Street; thence East 24.6 feet; thence North 664.5 feet; thence West 24.6 feet to the point of beginning.

Parcel 6:

Beginning at a point which is East along the Section line 1154.54 feet from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence East 140.86 feet; thence North 337.25 feet;

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thence West 140.86 feet; thence South 337.25 feet to the point of beginning.

Parcel 7:

Beginning 731.96 feet East and 345.49 feet North from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian; thence East 140.86 feet; thence North 301.01 feet; thence West 140.86 feet; thence South 301.01 feet to the point of beginning.

Also: Beginning at a point which is East 731.96 feet along the Section line from the Southwest corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence East 16.5 feet along the Section line; thence North 345.49 feet; thence West 16.5 feet; thence South 345.49 feet to the point of beginning.

Parcel 8:

Beginning at the Southwest corner of the Southeast Quarter of the Southwest Quarter of Section 19, Township 3 South, Range 1 East, Salt Lake Meridian; thence West 24.6 feet; thence North  $0^{\circ}14'40''$  West 646.50 feet; thence North  $15^{\circ}37'34''$  East 89.93 feet; thence South  $0^{\circ}14'40''$  East 733.11 feet, more or less to the point of beginning.

Less and excepting any portion lying within the bounds of 11800 South Street.