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UTAH COUNTY RECORDER  
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**AMENDED AND RESTATED  
MASTER DECLARATION OF PROTECTIVE COVENANTS  
CONDITIONS AND RESTRICTIONS FOR  
TOSCANA AT HIGHLAND**

(AN EXPANDABLE TOWNHOME RESIDENTIAL PROJECT)

THIS AMENDED AND RESTATED MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOSCANA AT HIGHLAND, an expandable residential project, (hereinafter the "Declaration") is made this 17<sup>th</sup> day of June, 2010, by TOSCANA AT HIGHLAND LLC (hereinafter "Declarant").

**RECITALS:**

A. Declarant is the owner of fee simple title to that certain real property situated in the City of Highland, County of Utah, and more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter the "Property").

B. Declarant's predecessor in interest previously recorded against the Property that certain Master Declaration of Protective Covenants Conditions and Restrictions for Toscana at Highland on March 9, 2010, as Entry No. 19357:2010, in the Office of the Utah County Recorder ("**Original Declaration**"). This Declaration amends and restates the Original Declaration in its entirety.

C. Declarant will create within and upon the Property a strictly residential subdivision complex made up of approximately 162 townhomes to be known as Toscana at Highland. In order to do so, Declarant desires to establish master protective covenants and conditions and restrictions upon the Property and each and every portion thereof; which will constitute a general scheme for the improvement, development and management of said Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of the environment within Toscana at Highland.

D. To provide efficient management for Toscana at Highland and to preserve its value, desirability and attractiveness, Declarant will incorporate a Utah nonprofit corporation called Toscana at Highland Home Owners Association, and Declarant delegates and assigns to such Association the powers of managing Toscana at Highland, of maintaining and administering the Common Facilities, of administering and enforcing all covenants, conditions and restrictions, of collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to and of performing such other acts as shall generally benefit Toscana at Highland.

E. Declarant will hereafter hold and convey title to all of the Property subject to the protective covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Property shall be held and conveyed subject to the following covenants, conditions restrictions and easements which are hereby declared to be for the benefit of said interests in the Property, and the owners of said interests, their successors and assigns.

## ARTICLE 1. DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

1.1 "Articles" and "Bylaws" shall mean the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended. The Articles, among other things, establish the Board to manage the affairs of the Association. The Bylaws, among other things, set forth the number of persons constituting the Board, the method of the Board's selection, the Board's general powers, the method of calling a meeting of Members of the Association and the Members required to constitute a quorum for the transaction of business.

1.2 "Assessments" shall include each and all of the Assessments hereinafter defined:

(a) "Capital Improvement Assessment" shall mean a charge against each Owner and such Owner's Lot representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Facilities which the Association may from time to time authorize pursuant to the provisions of this Declaration.

(b) "Reconstruction Assessment" shall mean a charge against each Owner and such Owner's Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Common Facilities pursuant to the provisions of this Declaration.

(c) "Regular Assessment" shall mean a charge against each Owner and such Owner's Lot representing a portion of the cost to the Association for Common Expenses.

(d) "Special Assessment" shall mean a charge against a particular Owner and such Owner's Lot, directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and such Owner's Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, or Association Rules, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or the Association Rules, together with attorney's fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

1.3 "Association" shall mean Toscana at Highland Home Owners Association, a Utah non-profit corporation, incorporated under the laws of the State of Utah, and its successors and assigns.

1.4 "Association Rules" shall mean the rules adopted from time to time by the Association pursuant to ARTICLE 7 hereof.

1.5 "Building" shall mean any structure which (a) is permanently affixed to the land, and (b) has one or more floors and a roof, including but not limited to a residential townhome.

1.6 "Board" shall mean the Board of Directors of the Association.

1.7 "City" shall mean the City of Highland, Utah, a municipal corporation of the State of Utah.

1.8 "Common Areas" shall mean all parts of each Lot which are from time to time devoted primarily to parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads and other similar areas.

1.9 "Common Expense" shall mean the actual and estimated costs of:

(a) maintenance, management, operation, repair, and replacement of the Common facilities, and all other areas within the Property and outside of the Property which are maintained by the Association, including, without limitation, the landscaped areas, the roadways, the sidewalks and the parking areas, etc., as provided in this Declaration or pursuant to agreement with the City or other governmental agency or authority;

(b) unpaid Special, Reconstruction and Capital Improvement Assessments;

(c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) the costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their Lots to the extent such services are paid for by the Association;

(e) The costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Facilities;

(f) The costs of any other insurance obtained by the Association; reasonable reserves as deemed appropriate by the Board;

(g) The costs of bonding the members of the Board, any professional managing agent: or any other person handling the funds of the Association;

(h) Taxes paid by the Association;

(i) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Facilities or portions thereof;

(j) The costs of any other item or items approved by the Board and incurred in connection with the Common Facilities, this Declaration, the Articles or the Bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

1.10 "Common Facilities" shall mean:

(a) all real property and the improvements and fixtures thereto and the personal property thereon owned by or leased to the Association from time to time for the use and benefit of the Owners, including, without limitation, streets, landscaped areas, parks, open spaces, paths, trails and slopes; and

(b) all property rights, improvements, fixtures and personal property owned by or leased to the Association from time to time for the common use and benefit of the Owners and situated upon public property or the private property of the Owners, including, without limitation, all easements running in favor of the Association and the improvements, fixtures and personal property situated within or upon said easements, landscaping, irrigation systems and associated pumps and hardware, street lighting systems, project identification, directional and street signs, and street fixtures. The Common Facilities shall be designated in each final subdivision plat recorded by Declarant with regard to the Property and shall be conveyed by Declarant to the

Association concurrently with the recording thereof. Declarant shall convey the Common Facilities to the Association free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of the conveyance), title exceptions of record and the covenants, conditions, reservations, restrictions and easements contained in this Declaration.

1.11 "Declarant" shall mean Toscana at Highland LLC.

1.12 "Design Guidelines" shall mean the guidelines prepared by Declarant setting forth certain architectural standards and specifications regarding the location and design of the Improvements, construction materials, lighting, landscaping, signage and other matters relating to Improvements on the Property. The Design Guidelines are incorporated in this Declaration by reference. Copies of the Design Guidelines are available at the office of the Association.

1.13 "Expansion Property" shall mean that certain real property more particularly described on Exhibit "B" attached hereto that may be added to the Project by the Declarant by recording additional plats.

1.14 "Hazardous Material" means (a) any waste, material or substance (whether in the form of a liquid, a solid or a gas and whether or not airborne), which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated pursuant thereto (collectively "Environmental Regulations" and individually, an "Environmental Regulation"); (b) petroleum; (c) asbestos; (d) polychlorinated biphenyls; and (e) any radioactive material. In addition to the foregoing, the term "Environmental Regulations" shall be deemed to include, without limitation, local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other government restrictions and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant thereto, which deal with or otherwise in any manner relate to, environmental matters of any kind.

1.15 "Improvements" shall mean any object, thing or activity of any kind installed, located or occurring on the Property which changes the external appearance of any portion of the Property, of any Lot or of any structure or thing affixed on the Property or any Lot, from its external appearance as it existed immediately prior to the installation, location or occurrence of the object, thing or activity. Improvements include, but are not limited to, all Buildings, structures, landscaping and lawns, exterior walkways, parking areas, drives and truck loading areas, signs, fences, poles, walls, utility lines, lighting, excavations, grading, berms, drainage facilities, repairs, alterations, painting and all other structures or objects of any type or kind installed or constructed on the Property.

1.16 "Institutional Mortgagee" shall mean a Mortgagee which is a bank, or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any insurance company, any federal or state agency, or any other institution specified by the Board.

1.17 "Lot" shall mean each or any individual lot as more particularly described in this Declaration, and any other lot or parcel shown on any recorded final subdivision plat filed by the Declarant to the extent such lots or parcels are part of the Property. References in this Declaration to a specific Lot shall refer to the particular Lot as set forth in, this Declaration and, as applicable, on the recorded final subdivision plat for such Lot. After the recording of the applicable subdivision plat, a Lot may not be subdivided without the consent of the Declarant. After the Turnover Date, a Lot may not be

subdivided without the consent of sixty-six and two-thirds percent (66-2/3%) of all Owners. Each Owner waives the right of partition as may be permitted under applicable law.

1.18 "Member" shall mean every individual or entity who qualifies for membership in the Association pursuant to ARTICLE 2, including Declarant so long as Declarant qualifies for membership pursuant to said Article.

1.19 "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

1.20 "Mortgagee" shall mean the mortgagee or beneficiary under any Mortgage. A "First Mortgage" shall refer to a Mortgagee whose Mortgage has priority over any other Mortgage encumbering a specific Lot.

1.21 "Occupant" shall mean and include the Declarant, the Owners, their respective heirs, successors and assigns (including Mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Project under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.22 "Owner" shall mean one or more persons or entities who are alone or collectively the record owner of fee simple title to a Lot, including Declarant, and the purchaser under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

1.23 "Permittees" shall mean all Occupants and all other invitees of Occupants.

1.24 "Project" shall mean all of the Property, together with all of the Buildings and other Improvements constructed thereon.

1.25 "Property" shall mean the real property described on Exhibit "A" attached hereto and incorporated herein by this reference and, subsequent to the annexation thereof pursuant to this Declaration, any real property which shall become subject to this Declaration.

1.26 "Set Back" shall mean the distance from the property line of the Lot to the Building or improvement that is subject to the Set Back requirement provided in this Declaration, the Design Guidelines for the Project, and in any recorded final subdivision plat affecting the Project or in the City's applicable zoning ordinance.

1.27 "Supplementary Declaration" shall mean each of those certain supplementary declarations of protective covenants, conditions and restrictions, or similar instruments recorded subsequent to this Declaration, which annex portions of the Expansion Property and thereby extend the plan of this Declaration to such additional property as provided in ARTICLE 16 of this Declaration.

1.28 "Utah Community Association Act" shall refer to the application provisions of the Community Association Act described in Utah Code 57-8a-101 et seq., as amended from time to time.

1.29 "Turnover Date" shall mean the earlier of: (i) the date upon which only four (4) of the Lots remain owned by and not sold by the Declarant; or (ii) the date the Declarant, at its sole and absolute discretion, selects as the Turnover Date for the Property then covered by and subject to this Declaration, evidenced by an instrument recorded in the Office of the Utah County Recorder, or (iii) December 31, 2025.

## ARTICLE 2. MEMBERSHIP IN THE ASSOCIATION

2.1 Membership. Every Owner shall be a Member of the Association subject to the terms of this Declaration, the Articles, Bylaws and Association Rules. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall also be subject to the terms and provisions of the Articles and Bylaws of the Association to the extent the provisions thereof are not in conflict with this Declaration. Membership in the Association shall be appurtenant to each Lot and may not be separated from the interest of an Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership in the Association; *provided, however*, that a Member's voting rights or privileges in the Common Facilities, or both, may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Not more than one membership in the Association shall exist with respect to ownership of a single Lot.

2.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of such Lot and then only to the transferee or Mortgagee of such Lot. Any attempt to separate the membership in the Association from the Lot to which it is appurtenant shall be void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in such Owner's name to the transferee of such Owner's interest in such Lot, the Association shall have the right to record the transfer upon the books of the Association so that the name of the Member corresponds with the ownership of the Lot set forth in the Utah County Recorder's office.

2.3 Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws, and Association Rules. The Association shall have one class of Members. Each Member shall be entitled to one (1) vote for each Lot such Member owns. When more than one person owns a portion of the interest in a Lot, each such person shall be a Member, but the vote for such Lot shall be exercised as they among themselves determine. Absent any other agreement among co-Owners of a single Lot, (i) a single co-Owner appearing at an Association meeting will be entitled to cast the one vote for the Lot, and (ii) if multiple co-Owners appear at an Association meeting, each co-Owner will have a prorata fractional vote based upon the ownership interests of the co-Owners appearing at such meeting. In no event shall more than one vote be cast with respect to any single Lot. The Association shall not be required to recognize the vote or written consent of any co-Owner that is not authorized to vote based upon a written designation of all such co-Owners delivered to the Association.

2.4 Approval of Members. Unless a different percentage is otherwise provided for in this Declaration, the Articles of the Bylaws, the vote of a majority of the Members shall be required to approve any matter before the Members. Votes may be taken at a meeting held pursuant to the requirements set forth in the Bylaws, or by an action by written consent. Quorum requirements for meetings of the Members shall be set forth in the Bylaws.

2.5 Declarant's Control of Association Prior to Turnover Date. Prior to the Turnover Date, the Declarant has the right to appoint all of the members of the Board and the officers of the Association. Declarant may (but shall not be required to) at any time relinquish all or any part of Declarant's control and rights set forth herein.

## ARTICLE 3. COVENANT FOR MAINTENANCE ASSESSMENTS

3.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants and agrees to pay, and each Owner of any Lot by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to

the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments and Reconstruction Assessments, such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, late charges and costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due, and of each subsequent Owner other than a Mortgagee. Any subsequent Owner of a Lot shall be deemed to have notice of the Assessments, whether or not a lien has been filed. No Owner may waive or otherwise escape liability for an Assessment by abandonment of the Lot. Notwithstanding the foregoing, an Assessment shall not be charged to the Declarant for Lots held by the Declarant that have not yet received a certificate of occupancy from the City.

3.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the comfort, health, safety, security and welfare of the Owners and to perform the duties and exercise the powers of the Association enumerated in its Articles, Bylaws, and this Declaration.

3.3 Regular Assessments. The amount and timing of payment of Regular Assessments shall be determined by the Board pursuant to the Articles and Bylaws after giving due consideration to the current maintenance, operational, and other costs and the future needs of the Association. Not later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the total Common Expenses to be incurred for the upcoming fiscal year. The Board shall then determine the amount of the Regular Assessment to be paid by each Owner. Written notice of the annual Regular Assessments shall be sent to every Owner; provided that failure to provide adequate notice does not relieve the Owner's obligation to pay the Regular Assessment. Each Owner shall thereafter pay to the Association his Regular Assessment in installments as established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Owner, and the date or dates when due.

3.4 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any fiscal year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a described capital improvement upon the Common Facilities to the extent the same is not covered by the provisions affecting Reconstruction Assessments in ARTICLE 10 hereof, including the necessary fixtures and personal property related thereto. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association.

3.5 Rate of Assessment. All Regular, Reconstruction and Capital Improvement Assessments shall be fixed by the Board at a rate computed and assessed with respect to each improved Lot in the ratio that such Lot bears to the total number of all improved Lots. All Regular, Reconstruction and Capital Improvement Assessments may be collected at intervals selected by the Board. For purposes of this paragraph, "improved Lots" means Lots that have a Building located thereon and that have received a certificate of occupancy. Prior to the Turnover Date, the Declarant must approve the allocation of Assessments to unimproved Lots.

3.6 Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge (not to exceed 25% of the then monthly Regular Assessment) may be collected by the Board for the issuance of these certificates, such certificates shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

3.7 Exempt Property. The following portions of the Property shall be exempt from the Assessments created herein: all properties dedicated to and accepted by, or otherwise acquired by a public authority; and the Common Facilities.

3.8 Special Assessments. Special Assessments shall be levied by the Board against a Lot to reimburse the Association for costs incurred in bringing an Owner and such Owner's Lot into compliance with the provisions of this Declaration, the Articles, the Bylaws or Association Rules, or any other charges designated as a Special Assessment in this Declaration, the Articles, Bylaws, or Association Rules, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. In the event the Association undertakes to provide materials or services which benefit one or more individual Lots and which can be accepted or not by individual Owners, such as tree trimming, such Owners in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

3.9 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to all Lots within the Property on the first day of the month following the conveyance of the first Lot within the Property by Declarant to an Owner other than Declarant. In the event the amount budgeted to meet Common Expenses for any year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate.

3.10 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

3.11 Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Facilities. After the Turnover Date, all amounts collected as reserves, whether pursuant to the preceding sentence of this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association.

#### ARTICLE 4. NONPAYMENT OF ASSESSMENTS

4.1 Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said due date (the "delinquency date"). If any such Assessment is not paid within fifteen (15) days after the delinquency date, a late charge equal to five percent (5%) of the late payment shall be levied and the Assessment shall bear interest from the delinquency date, at the rate of eighteen percent (18%) per annum.

4.2 Enforcement Rights. The Association shall have the right to take any of the following actions against one or more Owner(s) after the delinquency date:

- (a) The Association may bring an action to recover a money judgment against the Owner for unpaid Assessments, interest, late fees, costs, and attorneys' fees.



(b) The Association may foreclose the Association's lien against the Lot for the unpaid Assessments, interest, late fees, costs, and attorneys' fees pursuant to Utah Code § 57-8a-203.

(c) The Association may, after giving notice and an opportunity to be heard in accordance with Utah Code § 57-8a-204(2), terminate an Owner's right to receive utility services and access and use of Common Facilities.

(d) Subject to Utah Code § 57-8a-205, the Association may require tenants of a Lot to make future lease payments directly to the Association so long as Assessments remain unpaid for such Lot.

4.3 Other Remedies. The Association shall have all other rights and remedies available by application law, including the right to assess fines and suspend voting rights for any period during which any Assessment against an Owner's Lot remains unpaid.

4.4 Intent. No provision of this Article shall be interpreted so as to limit in any way the rights of the Association for collection of Assessments.

### ARTICLE 5. COVENANTS, CONDITIONS AND RESTRICTIONS

5.1 Permitted Use. No Lot shall be used except for residential townhome purposes. All Buildings must comply with the Design Guidelines.

5.2 Emissions/Discharge, Etc. To maintain a degree of protection of the investment which Owners in the Project make, the following are prohibited within the Project:

(a) Emission of smoke, fumes, odors, gases, vapors, steam, dust, sweepings, dirt, cinders or other particles or substances into the atmosphere which are detectable outside the boundaries of the Lot where created and/or which may be detrimental to the health, safety, welfare or comfort of any Owner of any other person, to the condition of any other portion of the Property, or to any vegetation within the Property.

(b) Discharge of fluids, gases, solid wastes or other harmful materials into any drainage canal or other waterway which may adversely affect the health, safety, welfare or comfort of any Owner or other person or the condition of any portion of the Property.

(c) Discharge of glare or heat, subsonic or ultrasonic sounds, or atomic, electromagnetic, microwave, ultra-violet, laser or other radiation which is detectable from any point exterior to the Lot upon which the operation is being conducted.

(d) Recurrent or continuous emission of sound or noise from any Lot which may be heard without instruments outside the boundaries of the Lot of origination.

(e) Recurrent or continuous ground vibrations perceptible without instruments at any point exterior to the Lot of origination.

(f) Physical hazard by reason of fire, radiation, explosion or other similar cause to either the Property or the surrounding area.

(g) Persisting unsightly condition (as determined by the Board in its sole discretion) on any Lot which is visible from any street or any other portion of the Property.

(h) Excessive risk of fire or explosion that increases the casualty insurance premiums for improvements on adjacent Lots.

(i) Violation of any applicable statute, ordinance, rule, regulation, permit or other validly imposed requirement of any governmental body.

5.3 Waste Disposal. No trash, garbage or waste material, including, but not limited to, scraps, grass, shrub or tree clippings, lumber, metals and plant waste, shall be kept, stored or allowed to accumulate on any portion of the Property except in an approved bin or contained within an enclosed structure appropriately screened from view. All trash, garbage and other waste materials shall be regularly removed from each Lot and the Property. Incineration of trash, garbage, or waste materials on the Property is prohibited; *provided, however*, that the Association is permitted to burn weeds.

5.4 Hazardous Materials.

(a) Restriction on Hazardous Materials. Any Hazardous Material brought upon, kept, used, generated, stored, treated, disposed of or released in or about any Lot, or soils or groundwater of the same, by any Owner of such Lot, any Occupant or Permittee of such Owner, or any party acting on behalf of any of them and in a manner which does not comply with applicable Environmental Regulations shall be referred to herein as a "Hazardous Condition". In the event any Hazardous Condition occurs on a Lot, the Owner of such Lot shall promptly take all actions at its sole expense as are reasonably necessary to correct said violation to the satisfaction of the regulating entity.

(b) Indemnity. If an Owner of a Lot breaches the obligations stated in Section 5.4(a) above or if a Hazardous Condition exists at any time, then the Owner of such Lot shall indemnify, defend and hold the Owners of each other Lot within the Property harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses, including, without limitation, (1) diminution in value of the Property, (2) damages for the loss or restriction on use of usable space or of any amenity of the Property, (3) sums paid in settlement of, payment of, or in order to comply with any claims, suits, actions, judgments, proceedings, or investigations, (4) costs, expenses, reasonable attorneys' fees, consultant fees, expert fees and incidental costs incurred in connection with any of the above or any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental or quasi-governmental entity. The obligations contained in this ARTICLE 5 shall survive the termination of this Declaration.

5.5 Restrictions on Signs. No signs, flags, or advertising devices of any nature, including without limitation, commercial, political, informational, or directional signs or devices, shall be erected or maintained on any Lot or other part of the Project, without the prior inspection and written approval of the Association, except as may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association.

5.6 Pets and Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or in the Common Areas except for service animals of Owners or their guests or invitees with disabilities and except that household pets may be kept or housed in units when expressly permitted in writing by the Association. Each Owner who desires to keep a pet on such Owner's Lot shall apply in writing to the Association for permission to keep such pet. In no event shall any pet be permitted in any portions of the Common Areas unless carried or on a leash. Each Owner who keeps a pet on a Lot shall promptly remove all pet waste from the Common Areas and Common Facilities. Each Owner who keeps

a pet on a Lot shall indemnify and hold all other Owners and the Association harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the Project. If a pet disturbs other Owners by barking or biting or in other ways becoming obnoxious, the Association will give notice to the Owner of such pet to cause such annoyance to be discontinued; and if such annoyance is not discontinued and corrected, the Association may revoke its permission to keep the pet in the Project and the pet shall be removed therefrom.

5.7 No Alterations. No Owner shall, without the prior written consent of the Association in each specific instance, make, or cause to be made any alteration, addition, removal, or improvement in or to the Common Areas or any part thereof, or do any act that would impair the structural soundness or integrity of the Buildings or other Improvements, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Project. No satellite dishes, outdoor antennas or other similar appliances shall be installed outside of a Building that is visible from outside such Lot.

5.8 No Obstructions. No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Association shall consent thereto in writing.

5.9 Prohibition of Damage and Certain Activities. Except with the prior written consent of the Association, nothing shall be done or kept on any Lot, in the Common Areas, or in any other part of the Project that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept on any Lot that would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept on any Lot or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees, or invitees of such Owner. No trampolines shall be permitted anywhere within the Project. No TV dishes or outdoor antennas shall be allowed without the specific prior written consent of the Association.

5.10 Commercial Business. Commercial Business shall not be permitted within the Project.

5.11 No Lease for Transient or Hotel Purposes. With the exception of a lender in possession of a Lot following a default in a First Mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease a Lot for transient or hotel purposes or for an initial term of less than thirty (30) days. No Owner shall lease less than the entire Lot. Any lease agreement shall be required to provide that the terms of such lease shall be subject in all respects to the provisions of the Declaration, the Articles, and the Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

5.12 Parking Restrictions. No recreational vehicles, trailers, or boats shall be parked within the Project. All abandoned vehicles left on the Project over seven (7) days may be removed from the Project by the Association at the expense of the owner of said vehicle.

5.13 Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Lots, the Common Areas, and the Project, as such rules and regulations may be modified, amended, and construed by the Association.

5.14 Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; *provided, however*, that during the course of such construction, nothing shall be done which will result in a violation of any said provisions, covenants, conditions, or restrictions upon completion of the construction.

5.15 Yard Sales. Yard sales, garage sales, estate sales, sample sales and similar kinds of sales activity from Lots is not permitted without the consent of the Association.

## ARTICLE 6. GENERAL CONSTRUCTION REQUIREMENTS

6.1 Construction of Improvements on Each Lot. All work performed in the construction, maintenance, repair replacement, alteration or expansion of any Improvement on a Lot shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (a) access to or from any other Lot, or part thereof, to or from any of the Common Facilities, (b) construction work being performed on any other Lot; or (c) the use, enjoyment or occupancy of any other Lot by any Owner, Occupant or Permittee of that Lot. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot shall be in compliance with all applicable laws, rules, regulations, orders and ordinances of the city, county, state and federal government, or any department or agency thereof; and no such work shall cause any Improvement located on any other Lot to be in violation of any such laws, rules, regulations, orders or ordinances. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot shall be done in a good and workmanlike manner and in accordance with good engineering standards.

6.2 Staging of Construction of Improvements. Staging for the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to such Lot.

## ARTICLE 7. DUTIES AND POWERS OF THE ASSOCIATION

7.1 General Duties and Powers of the Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) enforce the provisions of this Declaration, the Articles and the Bylaws by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, the promulgation of the Association Rules as provided in the Bylaws and Section 7.2 below, which shall include the establishment of a system of fines or penalties enforceable as Special Assessments;

(b) acquire, maintain and otherwise manage all of the Common Facilities and all facilities, improvements and landscaping thereof, and all personal property acquired by the Association, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain, including, without limitation, the landscaped areas, the roadways, the sidewalks and the parking areas, as provided in

this Declaration or pursuant to agreement with the City or other governmental agency or authority;

(c) pay any real and personal property taxes and other charges assessed against the Common Facilities unless the same are separately assessed to the Owners;

(d) obtain, for the benefit of the Common Facilities, all water, gas and electric, refuse collections and other services;

(e) grant easements where necessary for utilities and sewer facilities over the Common Facilities to serve the Property as provided in ARTICLE 13 below;

(f) contract for and maintain such policy or policies of insurance as may be required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;

(g) delegate its powers to committees, officers, or employees as provided in the Bylaws, employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of townhome developments or planned unit developments to perform all or any part of the duties and responsibilities of the Association;

(h) establish and maintain a working capital and contingency fund in an amount to be determined by the Board;

(i) have the power of entry upon any Lot where necessary in connection with construction, maintenance or repair for the benefit of the Common Facilities, or the Owners;

(j) at its sole discretion, provide trash pickup and disposal and snowplowing service for the benefit of the Owners and their Lots;

(k) acquire real property by lease or purchase for offices or other facilities that may be necessary or convenient for the management of the Common Facilities, the administration of the affairs of the Association or for the benefit of the Members;

(l) at its sole discretion, contract for communication services (e.g., cable television, Internet, telephone, etc.) for the benefit of the Owners who have subscribed for the service; and

(m) have the power to establish in cooperation with the City a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right to convey or lease, with or without the payment of monetary consideration, all or any portion of the Common Facilities to said district.

7.2 Association Rules. The Board shall also have the power pursuant to the procedures set forth in the Bylaws to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules"). The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Facilities; *provided, however*, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner in the same manner established in this

Declaration for the delivering of notices. Upon such delivery, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

7.3 Delegation of Powers. The Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and Bylaws; *provided, however*, no such delegation, whether to a professional management company, committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

7.4 Schedule of Fines and Penalties. The Association has the authority, from time to time, to set forth in the Association Rules a schedule of fines and penalties for violations of the Association's governing documents.

## ARTICLE 8. REPAIR AND MAINTENANCE

8.1 Repair and Maintenance by Association. Without limiting the generality of the statement of duties and powers contained in this Declaration, the Association shall have the duty to accomplish the following upon the Lots, Common Facilities or other land within and about the Project in such manner and at such times as the Board shall prescribe:

(a) maintain the Common Facilities in a clean, safe, attractive, and first-class condition at all times, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain in a clean, safe, attractive, and first-class condition at all times, including, without limitation, the landscaped areas, the roadways, the sidewalks and the parking areas;

(b) repair, restore, replace and make necessary improvements to the Common Facilities;

(c) maintain all drainage facilities and easements which constitute Common Facilities in accordance with the requirements of any applicable flood control district;

(d) cause the appropriate public utility to maintain any utility easements located within the Common Facilities;

(e) maintain the public rights-of-way within the Project; and maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote of Members holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members.

8.2 Repair and Maintenance by Owner. Every Owner shall:

(a) maintain such Owner's Lot and all improvements located therein in a clean, safe, attractive and first-class condition at all times, and in compliance with this Declaration, the Articles, Bylaws and the Association Rules;

(b) repair any structural or visible defects or damages to Improvements, keep the exterior of Buildings and other structures on such Owner's Lot in good clean, safe, attractive, and first-class condition and painted as required, keep such Owner's Lot free from weeds, trash and debris, and keep all lighting clean and functional.

8.3 Standards for Maintenance and Construction.

(a) Maintenance of the exterior of Buildings and Improvements shall be accomplished in accordance with the Design Guidelines.

(b) Throughout any period of construction upon a Lot, the Owner of such Lot shall keep the Lot and all streets used by construction equipment or trucks in clean and safe condition, shall remove daily all trash, rubbish, debris, mud and dirt therefrom, shall take all measures necessary or appropriate to control dust, blowing sand and erosion, whether by wind or water, on the Lot and shall so conduct all such construction so as not to interfere with free and ready access to existing Buildings and neighboring Lots.

8.4 Right of Association to Maintain and Install. In the event any Owner fails to maintain the exterior of such Owner's Building or Lot or the Improvements thereon, the Association may cause such maintenance to be accomplished as hereinafter set forth.

(a) Upon finding by the Board of a deficiency in such maintenance, the Board shall give notice of deficiency to the responsible Owner which shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its power under this Section 8.4(a) to a duly appointed committee of the Association.

(b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

(c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt and which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Board or any such committee renders a decision against the responsible Owner, it shall further set a date by which the deficiency is to be corrected by the responsible Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

(d) If the deficiency continues to exist after the time limitation imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance to be accomplished.

(e) In the event the Board or such committee elects to cause such maintenance to be accomplished, the following shall apply;

(i) The responsible Owner shall have no more than ten (10) days following the receipt of written notice of such election from the Board or such committee to select a day or days upon which such maintenance work shall be accomplished;

(ii) The date which said Owner selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said ten (10) day period;

(iii) If said Owner does not select such day or days within said ten (10) day period, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of said ten (10) day period; and

(iv) Unless the Owner and the Board otherwise agree, such maintenance shall take place only during daylight hours on any day, Monday through Saturday, excluding holidays.

(f) If the Association pays for all or any portion of such maintenance, such amount shall be a Special Assessment to the affected Owner and Lot.

## ARTICLE 9. INSURANCE

9.1 Types. The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

(a) A comprehensive policy of public liability insurance covering the Common Facilities with a limit of not less than Two Million Dollars (\$2,000,000) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others, and such other risks as shall customarily be covered with respect to similar real estate developments in the area of the Property, shall specifically name Declarant as an "additional insured" so long as Declarant owns a Lot in the Property, and shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners.

(b) A policy of fire and casualty insurance with extended coverage for the full replacement value of the Common Facilities (including all building service equipment and the like), without deduction for depreciation, with an "agreed amount endorsement" or its equivalent and clauses waiving subrogation against Declarant, Members and the Association and persons upon the Property with the permission of a Member, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as shall customarily be covered with respect to similar real estate developments in the area of the Property.

9.2 Waiver By Members. As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Association, the Board, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

9.3 Other Insurance; Annual Review. The Association may purchase such other insurance as it may deem necessary, including, but not limited to, plate-glass insurance, workmen's compensation, officers' and directors' liability, and errors and omission insurance. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Facilities in light of increased construction costs, inflation, practice in the area in which the Property is located, or any other factor which tends to indicate that either additional insurance policies or increased



coverage under existing policies are necessary or desirable to protect the interests of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

9.4 Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in ARTICLE 10 hereof. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers.

#### **ARTICLE 10. DESTRUCTION OF IMPROVEMENTS**

In the event of partial or total destruction of Improvements upon the Common Facilities, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be insufficient to accomplish such repair or restoration, a Reconstruction Assessment may be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. In the event any excess insurance proceeds remain, the Board shall distribute pro rata such excess funds to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Association. The rights of an Owner and the Mortgagee of his Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association.

#### **ARTICLE 11. EMINENT DOMAIN**

The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Facilities, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Common Facilities, the rules as to restoration and replacement of the Common Facilities and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Facilities. In the event of a total taking, the Board shall distribute pro rata any award to the Members. The rights of an Owner and the Mortgagee of such Owner's Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

#### **ARTICLE 12. RIGHTS TO THE COMMON FACILITIES**

12.1 Members' Right of Enjoyment. There is hereby reserved and established for the benefit of each Owner and such Owner's Occupants and Permittees a nonexclusive easement for use and enjoyment in and to the Common Facilities, and such right shall be appurtenant to and shall pass with the interest required to be an Owner to every Lot, subject to the following provisions:

(a) The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Facilities.

(b) The right of the Association subject to the approval rights of Mortgagees pursuant to ARTICLE 15 hereof, to dedicate or transfer all or any part of the Common Facilities to any public agency, authority or utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Facilities to a special tax assessment district or to the City, shall be effective unless approved by Members holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members.

(c) The right of the Association to establish, in cooperation with the City, a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of subsection 12.1(b) above, all or any portion of the Common Facilities to said district.

12.2 Waiver of Use. No Member may exempt such Member from personal liability for Assessments duly levied by the Association, nor release the Lot owned by such Member from the liens and charges hereof, by waiver of the use and enjoyment of the Common Facilities or the abandonment of his Lot.

### ARTICLE 13. EASEMENTS

13.1 Owners' Rights and Duties; Utilities and Communication Lines. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer, water, electricity, gas, telephone and communication lines or drainage facilities are installed within the Property, there is hereby reserved and established for the benefit of the Owners of any Lot served by said lines or facilities a nonexclusive easement to the full extent necessary therefore, to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon said lines or facilities, or any portion thereof, to repair, replace and generally maintain said lines and facilities as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(b) Wherever sanitary sewer, water, electricity, gas, telephone or communication lines or drainage facilities are installed within the Property, which lines or facilities serve more than one (1) Lot, the Owner of each Lot served by said lines or facilities shall be entitled to the full use and enjoyment of such portions of said lines or facilities which service such Owner's Lot.

(c) The foregoing provisions of this Section shall not be deemed to give any Owner the right to connect to any utility line or facility without first complying with all the requirements of the utility company providing the service in question, including without limitation, the payment of all required connection fees and related charges.

13.2 Utilities. Easements over the Property for the installation and maintenance of electric, telephone, communication lines, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded subdivision maps of the Property are hereby reserved and established for the benefit of each Owner and their respective successors and assigns.

13.3 Common Area Easements. The following nonexclusive easements are hereby reserved and established for the benefit of each Owner, and the Occupants and Permittees of each Owner:

(a) Nonexclusive easements over, upon, across and between each Lot for the purpose of pedestrian traffic between each Lot and (1) each other Lot which is contiguous thereto; (2) the public streets and alleys now or hereafter abutting or located on any portion of the Property; (3) the Common Facilities; (4) the parking areas now and hereafter located on each Lot; and (5) over and across the Common Areas located on each Lot; limited, however, to those portions of each Lot which are improved by the Owner thereof from time to time for pedestrian walkways and made available by such Owner for general use, as such portions may be reduced, increased or relocated from time to time by each such Owner.

(b) Nonexclusive easements for the purpose of vehicular traffic over, upon, across and between each Lot and (1) the public streets and alleys now and hereafter abutting any portion of the Property; and (2) the Common Facilities; limited, however, to those portions of the Property which are improved by the Owner thereof from time to time for vehicular access ways as such portions may be relocated from time to time by such Owner.

(c) Nonexclusive easements over, upon, across and between the access points and driving lanes from time to time established on each Lot for the purpose of providing ingress, egress, and access to (1) the easements hereby created; (2) the public streets and alleys now and hereafter abutting any portion of the Property; and (3) the Common Facilities.

(d) Nonexclusive easements in and to the parking areas from time to time located on each Lot for access to and use for vehicular parking purposes.

#### **ARTICLE 14. NATURE OF EASEMENTS AND RIGHTS GRANTED**

14.1 Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenances to the affected portions of the Property and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements and rights, the particular areas of the Property which are benefited by such easements shall constitute the dominate estate, and the particular areas of the Property which are burdened by such easements and rights shall constitute the servient estate.

14.2 Nature and Effect of Easements. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

- (a) are made for the direct, mutual and reciprocal benefit of the Owners, Occupants and Permittees of the respective Lots;
- (b) create mutual equitable servitudes upon each Lot in favor of the other Lots;
- (c) constitute covenants running with the land; and

(d) shall bind every person or entity having any fee, leasehold or other interest in any portion of the Property at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

## **ARTICLE 15. RIGHTS OF LENDERS**

15.1 Filing Notice; Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Property. Such notice need not state which Lot or Lots are encumbered by such Mortgage, but shall state whether such mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

15.2 Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot, except as otherwise provided in this Article.

15.3 Curing Defaults. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale, shall not be obligated to cure any breach of the provisions of this Declaration which occurred before such Mortgagee or transferee acquired title if such breach is noncurable or of a type which is not practical or feasible to cure, and such Mortgagee did not have notice of such breach at the time Mortgagee acquired its lien or security interest in the Lot or Lots. The determination of the Board made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

### 15.4 Relationship With Assessments Liens.

(a) The lien provided for in ARTICLE 3 hereof for the payment of Assessments shall be subordinate to the lien of any Mortgage which is recorded prior to the date any such Assessment becomes due.

(b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (2) the foreclosure of the lien of said Mortgage, the acceptance of a deed in lieu of foreclosure of the Mortgage or sale under a power of sale included in such Mortgage (such events being hereinafter

referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

(c) Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to the Lot, except for liens or claims for a share of such Assessments resulting from a reallocation of such Assessments to all Lots within the Property.

(d) Nothing in this Section shall be construed to release any Owner from his obligation to pay for any Assessment levied pursuant to this Declaration.

15.5 Other Rights of Institutional Mortgagees. Any Institutional Mortgagee, or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

(a) Inspect the books and records of the Association during normal business hours; and

(b) Receive the annual audited financial statement of the Association ninety (90) days following the end of the Association's fiscal year; and

(c) Receive written notice of all annual and special meetings of the Members or of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; *provided, however*, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and

(d) Receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Institutional Mortgage, which default has not been cured within sixty (60) days of a request therefore by the Association; *provided, however*, the Association shall only be obligated to provide such notice to Institutional Mortgagees whose written request therefore to the Association specifies the Lot or Lots to which such request relates.

15.6 Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

15.7 Voting Rights of Institutional Mortgagees. In the event of a default by the Owner of any Lot in any payment due under the terms of any Institutional Mortgage or the promissory note secured thereby, the Institutional Mortgagee or his representative shall have the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting Rights shall be restored to him at such time as such default is cured.

15.8 Notice of Destruction or Taking. In the event that any Common Facilities, or any portion thereof, is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" shall mean exceeding Ten Thousand Dollars (\$10,000). If requested in writing by an Institutional Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such Institutional Mortgagee.

## ARTICLE 16. TOWNHOME PARTY WALLS

16.1 Boundary Line Between Townhomes. The boundary line between two (2) townhomes shall be deemed to be the center line of the airspace between the exterior walls of the two (2) townhomes which abut such airspace (the "Party Walls") or, if there is no airspace, where the Party Walls abut, notwithstanding the fact that the common boundary line for the townhomes may not be located precisely upon said center line of the Party Walls. The Owner of each townhome Lot from time to time shall have the full rights of ownership, use and occupancy of the townhome located primarily upon such Lot and the Owner of a townhome shall not have any right, title or interest in any part of the other townhomes located primarily upon adjacent townhome Lots.

16.2 Limitation on Alterations to Party Walls. No Owner of a townhome shall have the right, except with the prior written consent of the adjacent Owner, to (i) make any alteration or additions to any Party Wall or any part thereof, except non-structural, interior alterations made within the living unit of such Owner's townhome, or (ii) take any action which would adversely affect the structural integrity or sound transmission prevention qualities of the Party Walls.

16.3 Exterior of Party Walls -- Colors and Materials. The exterior portions of any Party Wall visible outside a townhome shall be of the same color and/or materials as the exterior walls thereof or only such other colors and/or materials as are approved by the Association.

16.4 State Law Governs. To the extent not inconsistent with the provisions of this Article, the laws of the State of Utah regarding party walls shall be application with respect to each Party Wall.

## ARTICLE 17. EXPANSION RIGHTS

17.1 Right to Expand. There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option to expand the Project at any time (within the limits herein prescribed) and from time to time by adding to the Project all or a portion of the Expansion Property. The number of Lots which may be created on the Expansion Property is estimated to be twelve (12), but in no event may exceed fifteen (15). The Buildings on the Expansion Property are required to be substantially similar to those constructed upon the Property.

17.2 Annexation Without Approval and Pursuant to General Plan. All or any part of the Expansion Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, consent or vote of the Association or its Members or any other persons or parties, provided that a Supplementary Declaration covering the portion of said Expansion Property sought to be annexed, shall, if owned by Declarant, be executed and recorded by Declarant, or, if not owned by Declarant, shall be executed by the then Owner or Owners thereof, consented to by Declarant, and recorded; *provided, however,* no Supplementary Declaration shall be so executed and recorded pursuant to this Section subsequent to the later of (i) the Turnover Date, or (ii) December 31, 2015. The recordation of said Supplementary Declaration shall constitute and effectuate the

annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said annexed real property shall be part of the Property and all of the Owners of Lots in said annexed real property shall automatically be Members of the Association.

17.3 Supplementary Declaration. The annexations authorized under Section 17.2 shall be made by recording a Supplementary Declaration of Protective Covenants, Conditions and Restrictions, or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property. Such Supplementary Declaration contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing property unless such Supplementary Declaration is approved in the manner required herein for an amendment to this Declaration.

17.4 No Obligation to Expand. This 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: (i) the addition to the Project of any of the Expansion Property; or (ii) the taking of any particular action with respect to the Expansion Property.

17.5 Owners' Obligations Concerning Expansion of Project. Each Owner, by acquiring his interest in the Project, agrees not to inhibit or oppose Declarant's future development of the Expansion Property (whether or not added to the Project) and the obtaining of necessary approvals therefore. Without limiting the scope of the immediately foregoing sentence, no Owner, directly or indirectly, shall oppose such development in public meetings, by petition, or by legal actions.

## ARTICLE 18. GENERAL PROVISIONS

18.1 Enforcement. Either the Association or any Owner shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation; *provided, however,* that the Association shall have the exclusive right to enforce assessment liens. The Association or any Member shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles, Bylaws, or Association Rules, and any amendments thereto. Failure by the Association, Declarant or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles and the Bylaws, in any certain instance or on any particular occasion, shall not be deemed a waiver of such right on any such future breach of the same covenant, condition or restriction.

18.2 Not a Public Dedication. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the Property to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

18.3 Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

18.4 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, Occupants, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded; after which time said covenants, conditions and restrictions shall be automatically extended for a successive period of ten (10) years, unless an instrument, signed by a majority of the then current Members has been recorded, at least one (1) year prior to the end of any such period agreeing to change said covenants, conditions and restrictions in whole or in part.

18.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of townhomes on the Property and for the maintenance of the Property and the Common Facilities. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

18.6 Amendments. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees and/or First Mortgagees pursuant to ARTICLE 15 hereof, or otherwise, this Declaration may be amended only as follows:

(a) On or Prior to Turnover Date. At all times prior to the Turnover Date, this Declaration may be amended, altered or modified by a Supplementary Declaration approved and signed by the Declarant. No other Members will be required to approve such amendment.

(b) After Turnover Date. After the Turnover Date, this Declaration may be amended, altered or modified by Supplementary Declaration after the affirmative vote of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members, and further, this amendment provision shall not be amended to allow amendments by the vote of less than sixty-six and two-thirds percent (66-2/3 %) of the voting power of the Members; *provided, however*, any amendment or modification of ARTICLE 3 (Assessments) and ARTICLE 4 (nonpayment of Assessments) hereof shall require the prior written approval of not less than seventy-five percent (75%) of the voting power of the Members.

Prior to the Turnover Date, the Supplementary Declaration needs to be signed only by the Declarant. After the Turnover Date, proper approval of all amendments shall be shown by a certificate of the President or Secretary of the Association, attached to the Supplementary Declaration to be recorded, certifying that the signature of a sufficient number of Members approving the amendment are on file in the office of the Association. No such amendment shall be effective until the Supplementary Declaration is recorded in the Office of the Utah County Recorder's Office.

18.7 Singular Includes Plural. Whenever the context of this Declaration requires, the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter.

18.8 Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

18.9 Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the



Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Special Assessment with respect to the Lot involved in the action.

18.10 Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally, sent by fax or email, or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice or, if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice sent by fax or email shall be deemed delivered the earlier of twenty-four (24) hours after being sent or confirmed receipt. Any notice deposited in the mail shall be deemed delivered the earlier of forty-eight (48) hours after such deposit or confirmed receipt. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners, on behalf of all co-Owners, and shall be deemed delivered on all such co-Owners.

(b) Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice.

18.11 Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the Property and each and every Lot and portion thereof. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

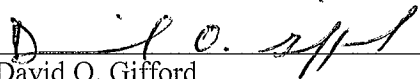
18.12 Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

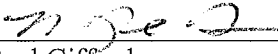
18.13 Non-liability of Officials. To the fullest extent permitted by law, neither the Board, nor any other committee of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

18.14 Leases. Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. Any Owner who shall lease his Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, Bylaws and Association Rules.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first herein above-written.

DECLARANT:  
TOSCANA AT HIGHLAND LLC

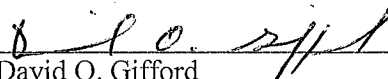
  
\_\_\_\_\_  
David O. Gifford  
Its: Manager

  
\_\_\_\_\_  
N. Paul Gifford  
Its: Manager

ACKNOWLEDGMENT AND CONSENT:

The undersigned company, as the original declarant and as a member of Toscana At Highland LLC, hereby consents to the foregoing Amended and Restated Master Declaration of Protective Covenants Conditions and Restrictions for Toscana at Highland.

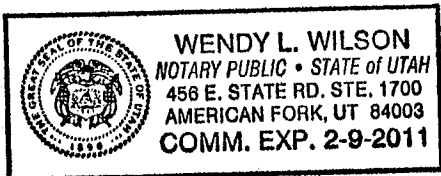
STONE RIDGE FINANCIAL, LLC

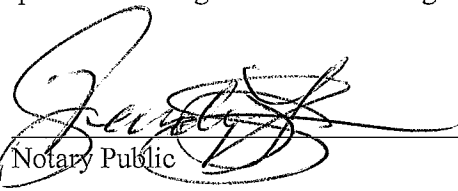
  
\_\_\_\_\_  
David O. Gifford  
Its: Member

  
\_\_\_\_\_  
N. Paul Gifford  
Its: Member

STATE OF UTAH        )  
                              : s.s.  
COUNTY OF UTAH    )

The foregoing instrument was acknowledged before me this <sup>14<sup>th</sup></sup> day of June, 2010, by David O. Gifford and N. Paul Gifford, in their capacities as managers of Toscana at Highland LLC, and as members of Stone Ridge Financial, LLC.

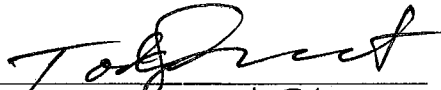


  
\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT AND CONSENT OF LENDER TO SUBORDINATION:

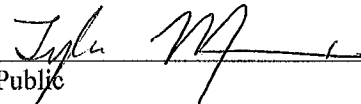
The undersigned officer of Central Bank, hereby acknowledges and consents to the foregoing Amended and Restated Master Declaration of Protective Covenants Conditions and Restrictions for Toscana at Highland ("CC&Rs"). Central Bank is the trustee and beneficiary under that certain Deed of Trust dated February 26, 2010, and recorded against the Property on March 2, 2010, as Entry No. 17192:2010, in the Office of the Utah County Recorder ("Deed of Trust"). Central Bank hereby agrees that the Deed of Trust shall be subordinate to the CC&Rs.

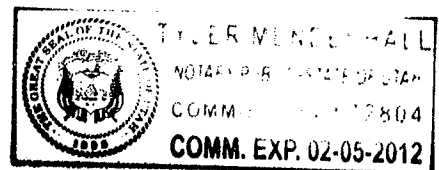
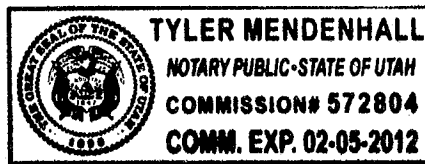
CENTRAL BANK

  
Printed Name: Todd Stewart  
Title: Vice President

STATE OF UTAH        )  
                              : s.s.  
COUNTY OF UTAH    )

The foregoing instrument was acknowledged before me this 9 day of JUNE, 2010, by Todd Stewart, as an authorized officer of Central Bank.

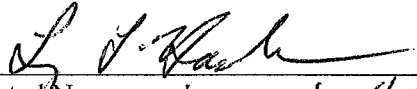
  
\_\_\_\_\_  
Notary Public



ACKNOWLEDGMENT AND CONSENT OF LENDER TO SUBORDINATION:

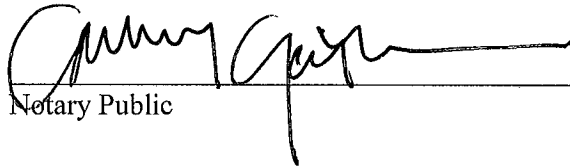
The undersigned officer of M&T Bank, hereby acknowledges and consents to the foregoing Amended and Restated Master Declaration of Protective Covenants Conditions and Restrictions for Toscana at Highland ("CC&Rs"). M&T Bank is the beneficiary under that certain Deed of Trust dated March 10, 2010, and recorded against phase 1 of the Project on March 10, 2010, as Entry No. 19918:2010, in the Office of the Utah County Recorder ("Deed of Trust"). M&T Bank hereby agrees that the Deed of Trust shall be subordinate to the CC&Rs.

M&T BANK

  
Printed Name: Larry L. Hardman  
Title: vice President

STATE OF UTAH        )  
                                  : s.s.  
COUNTY OF UTAH    )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of June, 2010, by Larry L. Hardman, as an authorized officer of M&T Bank.

  
Notary Public

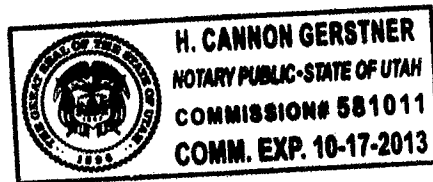


EXHIBIT "A"DESCRIPTION OF PROPERTY

That certain real property located in Utah County, State of Utah and more particularly described as follows:

A Parcel of Land located in the Northwest Quarter of Section 36, Township 4 South, Range 1 East, Salt Lake Base and Meridian, Highland City, Utah, More Particularly Described as Follows:

Beginning at a point on the North line of Coventry Townhomes Plat "D" which is North 00°08'13" East 305.64 feet along the section line and East 238.96 feet from a Brass Monument set in 2003 marking the West Quarter Corner of Section 36, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence North 00°08'13" East 4.76 feet; thence North 89°50'00" East 114.63 feet; thence North 01°06'34" East 467.20 feet along the East line of Lone Peak Fire Station Plat "A" and the West line of Highland Town Center -- Plat 1; thence along Highland Town Center -- Plat 1 the following Four courses; North 34°31'00" West 67.38 feet; East 34.00 feet; thence North 00°04'53" West 453.62 feet; thence North 89°53'41" East 323.75 feet; thence South 197.00 feet; thence East 44.50 feet; thence South 122.00 feet; thence along a non-tangent 325.00 foot radius curve to the right 171.64 feet (chord bears: North 72°43'30" East 169.65 feet) along the South line of Lot 3 Highland Town Center Plat 1; thence South 483.68 feet along the West line of Town Center Boulevard; thence along the arc of a 25.00 foot radius curve to the right 39.27 feet (chord bears: South 45°00'00" West 35.36 feet); thence South 28.48 feet along Highland Town Center -- Plat 1; thence West 94.31 feet; thence South 176.16 feet; thence West 529.80 feet along the North line of Coventry Townhomes Plat "D" to the point of beginning.

**EXHIBIT "B"**  
**DESCRIPTION OF EXPANSION PROPERTY**

That certain real property located in Utah County, State of Utah and more particularly described as follows:

Approximately .4 of an acre directly west of Exhibit "A" currently owned by Highland City.