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Mary Ann Trussell, Summit County Utah Recorder

01/29/2015 02:27:08 PM Fee \$147.00

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WHEN RECORDED RETURN TO:

Ivory Development, LLC

Christopher P. Gamvroulas

978 East Woodoak Lane

Salt Lake City, Utah 84117

(801) 747-7440

**NEIGHBORHOOD DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS  
FOR  
PARK TOWN HOMES SUBDIVISION,  
a part of the Park City Heights Subdivision**

This Neighborhood Declaration of Covenants, Conditions, and Restrictions for Park Town Homes Subdivision, a part of the Park City Heights Subdivision (the "Neighborhood Declaration") is made and executed by Ivory Development, LLC, of 978 East Woodoak Lane, Salt Lake City, Utah 84117 (the "Declarant").

**RECITALS**

- A. The Property is an area featuring unique and distinctive terrain;
- B. By subjecting the Property to this Neighborhood Declaration, it is the desire, intent and purpose of Declarant to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Neighborhood Declaration, and which will increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.
- C. This Neighborhood Declaration affects that certain real property located in Park City in Summit County, Utah described with particularity in Article II below (the "Property").
- D. Declarant is the owner of the Property.
- E. The Property is subject to the Master Declaration of Covenants, Conditions, and Restrictions for Park City Heights Subdivision recorded in the office of the Summit County Recorder on 1.29.2015 as Entry No. 01011811 in Book 2277 at Pages 309 of the official records (the "Master Declaration").
- E. Declarant has constructed or is in the process of constructing upon the Property a planned residential development which shall include certain Town Homes, Park Town Homes Common Area and Facilities, and other improvements of a less significant nature. The construction will be completed in accordance with the plans contained in the Final Plat to be recorded concurrently herewith.

Parcel Numbers PCH-1-T1 through PCH-1-T28

F. Declarant intends to sell to various purchasers the fee title to the individual residential Lots contained in the Property together with an appurtenant and corresponding membership interest in the Association, subject to the Project Documents.

G. The Project is to be known as "Park Town Homes" or "Park Town Homes, a part of the Park City Heights Subdivision".

K. Declarant desires, by filing this Neighborhood Declaration and Park Town Homes Final Plat, to submit the Property and all improvements now or hereafter constructed thereon to the provisions and protective covenants set forth in the Project Documents.

L. Since the completion of the Park Town Homes Subdivision may be in phases, the completed Park Town Homes Subdivision will consist of the original phase and all subsequent phases.

M. It is the intent of the Declarant that the guiding principle of this Project is to maintain affordable homes in the Project and that no decision be made without considering and making adjustments to accommodate this guiding principle.

## **COVENANTS, CONDITIONS, AND RESTRICTIONS**

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

### **I. DEFINITIONS**

When used in this Neighborhood Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1.1 The term Accessory Building shall mean and refer to any structure which is not the preliminary structure, containing at least one hundred and twenty (120) square feet, requires a building permit, and is considered by the Architectural Review Committee as an "accessory building". No shed, shack or other outbuilding or structure for which a building permit is not required shall be considered an "accessory building".

1.2 The term Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

1.3 The term Architectural Review Committee shall mean the person or persons appointed to review the designs, plans, specifications, homes, architecture, fencing, and landscaping within the Park Town Homes Subdivision (the "ARC").

1.4 The term Area of Common Responsibility shall mean and refer to the area which the Association is responsible to maintain, repair, replace, administer and regulate.

1.5 The term Area of Personal Responsibility shall mean and refer to the area which the Owner is responsible to maintain, repair and replace.

1.6 The term Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Park Town Homes Homeowners Association on file or to be filed with the Utah Department of Commerce.

1.7 The term Assessment shall mean and refer to any amount imposed upon, assessed or charged an Owner.

1.8 The term Association or Park Town Homes Homeowners Association shall mean and refer to the association of Owners at the Park Town Homes Subdivision taken or acting as a group in accordance with this Neighborhood Declaration.

1.9 The term Board of Directors shall mean and refer to the Board of Directors, the governing board elected or appointed to direct the affairs of the Association.

1.10 The term Builder shall mean an owner, Declarant or contractor who obtains a construction or occupancy permit to build a Dwelling Unit on one or more Lots.

1.11 The term Building shall mean and refer to any of the structures constructed in the Property.

1.12 The term Bylaws shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto, marked Exhibit "B," and incorporated herein by this reference.

1.13 The term Capital Improvement or Addition shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.

1.14 The term City shall mean and refer to the City of Park City in Summit County, Utah.

1.15 The term Common Expense shall mean and refer to:

1.15.1 All sums lawfully assessed against the Owners, including each Owner's share of the Common Expenses allocated by the Master Association as that term is defined in the Master Declaration;

1.15.2 Expenses allocated by the Association among the Owners;

1.15.3 Expenses agreed upon as common expenses by the Association; and

1.15.4 Expenses declared common expenses by this Neighborhood Declaration.

1.16 The term Community shall mean and refer to Park Town Homes Subdivision or where the context clearly requires the Park City Heights Subdivision.

1.17 The term Community Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in Park Town Homes Subdivision and the Park City Heights Subdivision, as determined by the Board of Directors from time to time.

1.18 The term Covenant to Share Costs shall mean and refer to any contract, agreement, Neighborhood Declaration of easements, licenses and/or covenant to share costs executed by the Association and recorded in the Office of the County Recorder which creates easements for the benefit of the Association subject to such Covenant to Share Costs, and/or which obligates the Association to share the costs of maintaining certain real, personal or mixed property described therein.

1.19 The term Dedicated Streets shall mean and refer to those public streets and cul-de-sacs within the Park Town Homes formally dedicated to the City or any other municipal or governmental body politic, entity or agency.

1.20 The term Design Guidelines shall mean and refer to the architectural and design requirements of the Project Documents, City or Declarant.

1.21 The term Declarant shall mean and include Ivory Development, LLC and any person or persons who might acquire title from it to all or some of the unsold Lots, Units s through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure; or, in the situation where, any person purchases all, or some of the remaining Lots, in a sale in the nature of a bulk sale. The person acquiring any of such property from the Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Declarant and by its successor in interest as the new Declarant.

1.22 The term Developmental Rights shall mean and refer to the right granted hereunder to the Declarant, its agents, representatives, employees, successors and assigns, to develop and improve the Property.

1.23 The term Dwelling or Dwelling Unit shall mean and refer to a dwelling, home or living unit constructed upon a Lot.

1.24 The term Eligible Guarantor shall mean and refer to a governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with the Neighborhood Declaration.

1.25 The term Eligible Insurer shall mean and refer to an insurer of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Neighborhood Declaration.

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

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

1.28 The term Guest shall mean and refer to a family member, guest, invitee, or licensee, of an Owner or Unit.

1.29 The term Improvement shall mean and refer to any physical change or addition to the Land to make it more valuable.

1.30 The term Individual Charge shall mean and refer to a charge levied against an Owner, Guest or Permittee for all expenses resulting from the act or omission of such Person, excepting the Owner's failure to pay any Assessment.

1.30.1 The act or negligence of any Guest or Permittee shall be deemed to be the act or negligence of the Owner responsible for such Person.

1.30.2 Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner, Guest or Permittee including:

1.30.2.1 The cost to repair any damage to any portion of the Property on account of loss or damage caused by such Person; or

1.30.2.2 The cost to satisfy any expense to any other Owner or Owners or to the Association due to any intentional or negligent act or omission of such Person, or resulting from the breach by such Person of any provisions of the Project Documents; and

While Individual Charges are not Assessments, they are secured by a lien in the same manner as Assessments, as set forth below. The Association also shall have all other remedies, both legal and equitable, described in the Project Documents available against any Owner for nonpayment.

1.31 The term Land shall mean and refer to all of the real property subject to the Neighborhood Declaration.

1.32 The term Landscaping shall mean and refer to the grass, trees, shrubs, bushes, flowers, plants, and like improvements located within the Property, as well as the appurtenant sprinkling and irrigation systems.

1.33 The term Lender shall mean and refer to a Mortgagee.

1.34 The term Lot or Park Townhome Lot shall mean and refer to a separate physical part of the Property intended for independent use as shown on the Park Town Homes Final Plat. Each Lot shall be assigned a separate “parcel” or tax identification number by the appropriate governmental agency.

1.35 The term Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot and its Neighborhood.

1.36 The term Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50.01%) percent of the total eligible number.

1.37 The term Management Committee shall mean and refer to the Board of Directors, the governing board elected or appointed to direct the affairs of the Association.

1.38 The term Manager shall mean and refer to the professional person appointed or hired by the Association to manage and operate the Property, and assist in the administration of the Association.

1.39 The term Map shall mean and refer to the Park Town Homes Final Plat.

1.40 The term Mortgage shall mean and refer to any mortgage, deed of trust or other security instrument (including the seller’s rights under a contract for deed) by which a Lot or any part thereof or interest therein is encumbered. A *First Mortgage* is a Mortgage having priority as to all other Mortgages encumbering a Lot, or any part thereof or interest therein.

1.41 The term Mortgagee shall mean and refer to any person or entity named as the mortgagee, beneficiary or holder of the seller’s interest (so long as a copy of the contract for deed is given to the Association) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean and refer to any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in the Neighborhood Declaration shall also protect the Declarant as the holder of a First Mortgage of a Lot, or any interest therein.

1.42 The term Neighborhood shall mean and refer to any residential type or recreational area within the Property which is designated by the Declarant as a Neighborhood, whether or not governed by a subassociation.

1.43 The term Neighborhood Declaration shall mean and refer to this Neighborhood Declaration of Covenants, Conditions, and Restrictions for Park Town Homes.

1.44 The term Office of the County Recorder or County Recorder shall mean and refer to the Office of the County Recorder of Summit County, Utah.

1.45 The term Owner shall mean and refer to a Person who is the owner of a fee or an undivided fee interest in a Lot, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.46 The term Park Town Homes shall collectively and severally refer to the Park Town Homes Subdivision.

1.47 The term Park Town Homes Final Plat shall mean and refer to Final Plat for the Park Town Homes Subdivision or the Property on file in the Office of the County Recorder.

1.48 The term Park Town Homes Common Areas and Facilities shall mean and refer to all real property in the Property owned in common by the Lot Owners including but not limited to the following items:

1.48.1 The real property and interests in real property submitted hereby, including the entirety of the Property and all improvements constructed thereon, excluding the individual Lots and Common Area designated on the Master Final Plat for the Park City Heights development.

1.48.2 All Park Town Homes Common Areas and Facilities designated as such in the Park Town Homes Final Plat;

1.48.3 Private Yard Areas (if any) as designated as such in the Park Town Homes Final Plat;

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

1.48.5 The Property's outdoor grounds including landscaping, open and green space, Entry Monument, roads, drives, lanes and alleys;

1.48.6 All portions of the Property not specifically included within the individual Lots and Common Area designated on the Master Final Plat for the Park City Heights development; and

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

Provided, however, utility installations such as telephone, electricity, gas, water, and sewer may be dedicated to the City or other public utility and, if so, this definition shall not be construed to allow the Association to exclude the City or other public utility from the ownership and control of the utility systems so dedicated.

1.49 The term Park Town Homes Final Plat shall mean and refer to the Park Town Homes Final Plat, the official map of the Park Town Homes as approved by the City and on file in the Office of the County Recorder.

1.50 The term Period of Declarant's Control shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) all of the Lots have been conveyed by the Declarant or (b) the Declarant executes and records in the Office of the Summit County Recorder a written Waiver of its right to control.

1.51 The term Permittee shall mean a tenant, resident occupant, visitor, guest, invitee or family member.

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

1.53 The term Plans and Specifications shall mean and refer to any and all documents designed to guide or control the construction of an Improvement, or alterations, modifications, changes, additions and the like thereto, including without limitation all documents indicating the size, shape, configuration and/or materials, to be incorporated; all site plans, excavation and grading plans, elevation drawings, floor plans, techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

1.54 The term Plat Map shall mean and refer to the Final Plat.

1.55 The term Private Amenity shall mean and refer to certain real, personal or mixed property located adjacent to, in the vicinity of, or within the Property, which is privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis, or otherwise. Any property constituting a Lot, Unit, or Park Town Homes Common Area and Facilities, as those terms are defined herein or on the Final Plat shall not be considered a Private Amenity.

1.56 The term Private Street, Road, Cul-de-sac, Way or Drive shall mean and refer to those streets, roads, cul-de-sacs, drives, lanes, alleys or turnabouts within the Park Town Homes not dedicated to the City or any county, state, or other governmental body politic, entity or agency.

1.57 The term Project shall mean and refer to all of the Park Town Homes, as shown on the Plat unless the context clearly requires otherwise.

1.58 The term Project Documents shall mean and refer to the Master Declaration and Master Final Plat, Development and Design Guideline Agreements, this Neighborhood



Declaration, the Park Town Homes Final Plat, Bylaws, Rules and Regulations, and Articles of Incorporation of the Association.

1.59 The term Property shall mean and refer to all of the land or real estate, improvements and appurtenances comprising the Park Town Homes submitted to this Neighborhood Declaration.

1.60 The term Qualified Buyer or Qualified Owner shall mean and refer to a Person who qualifies to purchase and own a deed restricted lot.

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

1.62 The term Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

1.63 The term Resident shall mean and refer to any person living or staying at the Park Town Homes. This includes but is not limited to natural person or persons residing in the Dwelling Unit.

1.64 The term Single Family shall mean and refer to *one* of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and an additional person or persons as a caretaker or as domestic help, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.

1.65 The term Single Family Residence shall mean and refer to (a) both the architectural style of a Dwelling Unit and (b) the nature of the residential use permitted.

1.66 The term Total Votes of the Association shall mean and refer to the total number of votes appertaining to all Lots in the Property and the Declarant's votes.

1.67 The term Townhouse or Town Home shall mean and refer to a residential Lot or Dwelling Unit as shown on the Final Plat, with or without walls or roofs in common with other single family Lots or Dwelling Units and which shall include fee title to the real property lying directly below said single family Lot or Dwelling Unit and an undivided interest in the use of the Park Town Homes Common Area and Facilities, subject to the Neighborhood Declaration.

1.68 The term Tract shall mean and refer to the Property.

1.69 The term Unit shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit. Where the context clearly requires, the term "Unit" may refer to a Lot.

1.70 The term Use Restrictions shall mean and refer to the rules, regulations and use restrictions described with particularity below, as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded from time to time.

1.71 The term Visible From a Neighboring Property shall mean with respect to any object, that such object is or would be visible to an individual six feet (6') tall, standing at ground level on any portion of the neighboring property.

## II. SUBMISSION

The Property, described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, is hereby submitted to the Master Declaration, Development and Design Guideline Agreements and this Neighborhood Declaration.

The Property is hereby again made subject to, and shall be governed by the Master Declaration, Development and Design Guideline Agreements and this Neighborhood Declaration, and the covenants, conditions and restrictions set forth therein.

The Property is SUBJECT TO the described easements and rights of way.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: the Master Declaration, Development and Design Guideline Agreements and this Neighborhood Declaration; all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all

easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Final Plats or otherwise existing; an easement for each and every Park Town Homes Common Area and Facilities improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Property; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such Park Town Homes Common Area and Facilities improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

### III. COVENANTS, CONDITIONS, AND RESTRICTIONS

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

1. Description of Improvements. The significant improvements contained in Park Town Homes, Phase 1 include or will include up to \_\_\_\_\_ Lots and Dwelling Units, public roads, private drives, lanes and alleys, landscaping, and other Park Town Homes Common Area and facilities of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentences are depicted on the Park Town Homes Final Plat.

2. Description of Property . The Park Town Homes Final Plat shows the type and location of each Lot and its Lot Number.

3. Legal Status of the Property and Scope of the Project. All Lots shall be capable of being privately and independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers. Neither the Association nor the Board of Directors or any Owner shall act or fail to act so as to jeopardize, impair or reduce the utility of the program or the integrity of the Declarant's Affordable Home design scheme.

4. Membership in the Association and Voting Allocations. Membership in the Association is mandatory and may not be partitioned from the ownership of a Lot. Each Owner by virtue of his accepting a deed or other document of conveyance to a Lot is deemed to be a member of the Association.

4.1 The Association shall have two classes of membership, Class A and Class B as follows:

4.1.1 Class A. Class A Members shall be all Owners with the exception of the Class B Members. Class A Members shall be entitled to vote on all issues before the Association. Each Class A Member shall have one (1) vote per Lot owned. No vote shall be cast or counted for any Lot not subject to assessment. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.

4.1.2 The Class B Member shall be the Declarant. Each Class B Member shall have three (3) votes per Lot owned. The rights of the Class B Member, including the right to approve actions taken under this Neighborhood Declaration and the Bylaws, are specified elsewhere in the Neighborhood Declaration and the Bylaws. The Class B Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class B Control Period. The Class B membership shall terminate and shall be converted to Class A membership when the Period of Declarant's Control ends.

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

All of Lot No \_\_\_\_\_ contained within PARK TOWN HOMES, PHASE [ ], a Utah planned residential development, as the same is identified in the Final Plat recorded in Summit County, Utah as Entry No. \_\_\_\_\_ : \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Summit County, Utah (as said Final Plat may have heretofore been amended or supplemented) and in the Neighborhood Declaration of Covenants, Conditions, and Restrictions of PARK TOWN HOMES, recorded in Summit County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Summit County, Utah (as said Neighborhood Declaration may have heretofore been supplemented), together with an undivided interest in the Park Town Homes Common Area and Facilities.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of the Project Documents shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Neither the membership in the Association, nor percentage of ownership interest in the Association, shall be separated from the Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association shall automatically accompany the transfer of the Lot to which they relate.

6. Status and Mandatory Association. The Board of Directors may unilaterally refile the articles of incorporation of the Association if its status has been suspended or dissolved, and adopt the prior bylaws. Each purchaser of a Lot by virtue of his acceptance of a deed or other document of conveyance shall automatically become a Member of the Association.

7. Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Lot; provided, however, all Park Townhome Lots are deed restricted and only Qualified Buyers may purchase and own a Lot. Otherwise, it is intended that the Park Townhome Lots may and shall be owned as any other property rights by any Person. The Property shall be used only for residential purposes, except as expressly set forth below, and the Park Town Homes Common Area and Facilities shall only be used in a manner consistent with the residential nature of the Park Town Homes.



8. Easements.

8.1 Grant of Easement. Declarant hereby reserves to itself and grants to the Association, a non-exclusive, perpetual right-of-way and easement over, across and through the Tract, together with the right to use, operate, maintain, repair and replace the Common Area and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.

8.2 Common Use of Easement. Said easement is to be used in common by the Association, Declarant and each Owner, subject to all of the terms, covenants, conditions and restrictions set forth herein.

8.3 Private Easement. The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Declarant, Association and Owners.

8.4 Improvements. Improvements, including Buildings, Lots, Town Homes and the Common Area and Facilities constructed as subsequent phases of the Project may encroach upon portions of the Buildings, Lots, Town Homes and/or Common Area and Facilities of earlier phases of the Project. A perpetual easement for such encroachment necessary to repair, maintain and operate such improvements is hereby granted.

8.5 Rights of Access. Each Owner shall have the right to ingress and egress over, upon and across the Common Area and Facilities as necessary for access to the Building and Lot or Town Home he is occupying and to any Common Area appurtenant to his Lot or Town Home, and he shall have the right to the horizontal, vertical and lateral support of his Lot.

8.6 Declarant's Easement. The Declarant hereby reserves to itself, and its affiliates and assignees, an exclusive easement to make such use of the Common Area and Facilities as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to the Declaration, including, without limitation, the right to construct and maintain the Common Area and Facilities for use by the Association and Owners.

8.7 Construction Easements. The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over the Common Area and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Buildings and Lots. The Owners by acceptance of a deed or other document of conveyance to a Suite do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their property until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners. Declarant's construction activities pursuant to the easement granted hereunder shall not be considered a violation of the Use Restrictions.

8.8 Locations Facilities Easements. Declarant hereby reserves to itself a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the “Locations of Facilities”) within the Project. Declarant further reserves a right of access to the Locations of Facilities over, across, and through all other Common Area and Facilities in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Owner, Mortgagee or the Association. The Association, for itself and on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its rights hereunder.

8.9 Entry Monument Easement. Easements for the Entry Monument and corresponding utility and drainage systems and facilities, and irrigation are reserved hereby and on the recorded Final Plat. An Owner may not do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of utilities, Entry Monument, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. If a drainage channel is altered by an Owner, the Declarant and/or the Association expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass.

8.10 Access Easement for Emergency and Government Vehicles. An easement and right of way is hereby granted to all Owners, Mortgagees, Residents and government health, safety, sanitary and emergency vehicles over across and through the Property and all Private Streets, Roads, Cul-de-sacs, Ways and Drives in order to access all common elements, Lots, Buildings and Improvements.

9. Joint or Common Utility Easements with Neighboring Subdivisions or Developments. The Declarant for itself and/or its successors in interest (including but not limited to the Association), hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement agreements with or to convey to owners or declarants of adjoining subdivisions, projects or developments any and all reasonable and necessary utility easements or rights of way for gas, water, power, sewer, storm drain systems or the like under, over, across or through the Park Town Homes.

10. Rules and Regulations. The Board of Directors may adopt, amend, modify, create, expand, or enforce rules and regulations as well as architecture and landscape design criteria. The rules, however, are subject to:

10.1 Any express provisions, restrictions and limitations in the Declaration;

10.2 The Business judgment rule<sup>1</sup>; and

10.3 The right of Owners to notice and to disapprove.

10.4 Before it adopts or changes a rule or regulation, the Board of Directors must provide the Owners within fifteen (15) days of its meeting advance notice of its intention. Notice is not required in an emergency.<sup>2</sup> The governing board must provide an open forum at a board meeting and provide Owners with a chance to be heard. The Owners may, within sixty (60) days, and by a vote of at least a majority of the total ownership at a special meeting called for this purpose disapprove the proposed rule or regulation.<sup>3</sup>

10.5 The rules must treat similarly situated people the same, although the rules may vary according to the type of service provided. The rules may not violate the right of Owners to display religious and holiday signs inside their dwelling, although the rules may define the time, place, and manner of displays visible from outside the Dwelling, Unit or Lot. The rules may not regulate the content of political signs, although the Rules may define the time, place, and manner of displays visible from outside the Dwelling, Unit or Lot. The rules may not interfere with an Owner's determination of the composition of his or her household, although they may legally require the occupants to be members of a single housekeeping unit and may limit the total number of occupants permitted in a Dwelling, Unit based its size, configuration and a fair use of the common areas. The rules may not interfere with activities within a Lot or Dwelling Unit if the activity is legal. Limits may be made if the activities are not considered typical for a residential neighborhood, or if the activities create an additional expense for the association, or if the activities are dangerous or pose a health concern, or if the activities constitute a nuisance, create unreasonable noise or traffic, or are unsightly or annoying, or create secondary smoke issues. If federal, state or local law permits, rules may be adopted regulating use or behavior inside a Dwelling, Unit or Lot, including by way of illustration but not limitation smoking, rentals, noise, traffic and nuisance. The rules may address a variety of matters such as user fees, the availability of the Common Area and Facilities, the denial of access and use of recreational amenities to trespassers, violators, misusers or abusers, the transfer of lots, rental terms, the disposal of personal property, etc. The rules may regulate the maintenance and use of the Common Area and Facilities, late fees, accruing interest, indemnity, etc. No rule may be in conflict, inconsistent or incongruent with the Declaration and Bylaws. If any provision of this subsection is held to be illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This subsection will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this subsection will remain in full force and effect and will not be affected by the

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<sup>1</sup> The business judgment rule is a presumption of the law that the governing board is acting in best interest of the association and, as a result, the decisions it makes are protected from judicial review in the event there is a loss or the decision turns out to be wrong, so long as the board did not violate its fiduciary duty to act in good faith and not commit a fraud, self-deal or have a conflict of interest, essentially, not to be guilty of intentional misconduct.

<sup>2</sup> Imminent risk of immediate and substantial harm to person or property.

<sup>3</sup> Note: The Board of Directors is NOT required to call a special meeting unless a petition is submitted to it in accordance with the requirements of the Bylaws for a petition to require a special meeting.



illegal, invalid, or unenforceable provision or by its severance from this subsection. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this subsection, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

11. Reasonable Rights to Develop. No rule or action by the Association or Board of Directors shall unreasonably impede Declarant's right to develop the Property in accordance with the development approvals and Final Plat approved by the City, including, but not limited to, the rights of the Declarant as set forth herein.

12. Conflict. The Rules are subject to the Master Declaration, the Development and Design Guideline Agreements, this Neighborhood Declaration and City ordinances, and in the event of a conflict, the more strict and restrictive requirement shall in all instances govern and control.

13. Initial Use Restrictions and Nature of the PARK TOWN HOMES. The Lots are subject to the following initial use restrictions which shall govern both the architecture and the activities within the Property:

13.1 Private Residence. No Lot (except as set forth below) shall be used except for residential purposes and all residents shall be obligated by the following requirements: No temporary structure including trailers, tents, shacks, garages, barns or other outbuildings shall be used on any Lot at any time.

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

13.3 Storage and Parking of Vehicles. The driving, parking, standing, and storing of motor vehicles in, on or about the Property shall be subject to rules and regulations adopted by the Board of Directors; provided, however, there shall be no outside storage or parking upon any Lot or the Park Town Homes Common Area of any automobile, Recreational, Commercial or Oversized vehicle, truck, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other transportation divide of any kind, except for Owners within the parking spaces in the Owner's garage and for visitors temporarily parking in spaces and in accordance with rules and regulations designated and promulgated by the Board of Directors. No Owners, Guests or Permittees shall repair or restore any vehicle of any kind upon any Lot or Park Town Homes Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper

repair facility. No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally constructed. Parking in the private street is prohibited. No Owner may park his motor vehicle or trailer in the “visitor” parking areas provided within the Project. Parking shall be allowed in driveways located in tandem with the garage as long as it complies with the above requirements. Due to the strict parking restrictions within the Project, and subject to City conditions of approval for the development, sufficient space shall be retained in each garage to permit the parking of the intended number of vehicles therein.

13.4 Garbage and Refuse Disposal. No Lot shall be used as a dumping ground. All trash, garbage, debris, rubbish or other waste shall be kept and removed in accordance with Section 29 below.

13.5 Aerials, Antennas, and Satellite Systems. Satellite dishes, aerials, antenna, or systems may only be installed in accordance with FCC regulations taking into consideration any written guidelines established by the Architectural Review Committee. The Board of Directors may bar, in its sole discretion, satellite dishes, aerials, antenna, or systems, including HAM radio antenna, not expressly authorized by FCC regulations.

13.6 Animals and Pets. Large animals as that term is defined by City Ordinance are not allowed. No pets, animals, livestock, or poultry of any kind may be commercially bred at the Property. Up to two (2) domestic pets as that term is defined by City Ordinance per Lot are allowed; provided, however, pets must be properly licensed and registered. Pets may not create a nuisance. The following acts shall be considered a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) running loose throughout the Property and not in a cage or on a leash and under the control of a responsible person; (e) barking, howling, whining, or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb the sensibilities of a reasonable person or interfering with the right of residents to the peaceful and quiet enjoyment of their property; or (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents.

13.7 Signs. No signs, billboards or advertising structures or devices of any kind may be built, installed or displayed on the Property or any Lot except for a single sign with a maximum size of 2' x 2' for specific purpose of advertising the sale of a Dwelling Unit; provided, however, this restriction does not apply to and is not binding upon the Declarant, who may use whatever signs it deems appropriate to market its Lots. “For Rent” or “For Lease” signs in the Park Town Homes Common Area, on a Lot, or showing from a Dwelling Unit are prohibited. The Association may not prohibit the display of a U.S. flag inside a Dwelling Unit, Lot or Limited Common Area, if the care of the flag and display is consistent with federal law. The Association may control and restrict the display of a flag in the Common Area. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on

their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.

13.8 Zoning. All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Property land use and buildings.

13.9 Nuisances. No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the other residents, or which might interfere with the right of other residents to the quiet and peaceful enjoyment of their property.

13.10 Temporary Structures. No structure of a temporary nature or character, including but not limited to any trailer, shack, shed, tent, garage, barn or other outbuilding shall be used on any Lot at any time as a residence.

13.11 Neighborhood. This Property is located by and is subject to the normal, everyday sounds, odors, and all other aspects associated with the nearby residential and commercial areas.

13.12 Laws. Nothing shall be done or kept in, on or about any Lot or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

13.13 Damage or Waste. Each Owner shall repair any damage he or any other residents, guests, or invitees of his Lot may cause to another Owner, Lot, or Dwelling Unit, and promptly restore the property to its original condition.

14. Owner-Occupied. All Lots must be owner-occupied in accordance with Section 5.3 of the Deed Restrictions recorded as document entry # \_\_\_\_\_ on the \_\_\_ day of \_\_\_\_\_, 201\_\_ in the office of the Summit County Recorder. At the sole discretion of the City, leasing may be allowed for extenuating circumstances but the approval must be expressed in writing to be valid. For use herein, the term "owner-occupied" shall mean a Lot occupied by one of the following: (1) The vested owner (as shown on the records of the Summit County Recorder); (2) The vested owner and/or his spouse, children or siblings; or (3) The shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional owner (provided, such person holds a beneficial interest in such legal entity of at least 50.01%) and/or his spouse, children or parents. Owners and non-Owner occupants are subject to the leasing restrictions set forth in Section 16 below.

15. Architectural Review Committee. The Architectural Review Committee (the "ARC") shall have the right, power and authority to resolve all architectural, design and related issues. The Declarant and upon the termination of the "Period of Declarant's Control," the Board of Directors has the sole right and exclusive authority to appoint all members of the ARC, subject to the Neighborhood Declaration. In the event of any conflict, incongruity or

inconsistency between a decision of Declarant (or at the termination of the Period of Declarant's Control, the Board of Directors) and the ARC, the former shall in all respects govern and control.

15.1 ARC Standards, Standing and Powers. In the event of a conflict, inconsistency or incongruity between the Act, the Master Declaration, this Neighborhood Declaration or the Development and Design Guideline Agreements, the provision which is the most strict and most restrictive shall govern in all instances. Any instrument executed by the ARC or its legal representative that recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

15.1.1 The ARC shall constitute a legal entity capable of dealing in its own name or in behalf of two (2) or more Owners; and

15.1.2 The ARC shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions.

15.2 Landscaping. The Association shall maintain all landscaping unless otherwise determined by the Board of Directors.

15.2.1 Declarant will build-out and install all landscaping in the Townhouse Neighborhood and in the Park Town Homes Common Area, including the placement of sod and a sprinkler or irrigation. The Association shall maintain, repair and replace all landscaping in the Townhouse Neighborhood and in the Park Town Homes Common Area. The Association shall have absolute and unilateral control over the landscaping in the Townhouse Neighborhood and the Park Town Homes Common Area, including the design, location, selection, and planting of all trees, shrubs, bushes, sod and plants, and no alterations, modifications or changes of any kind may be made by any Owner or resident at any time without the prior written consent of the ARC, and any such alteration, modification or change made without its prior written consent shall be considered non-conforming.

15.2.3 Each Owner of a Lot in the Single Family Residence Neighborhood shall, at his sole expense, be responsible to landscape and maintain his Lot. The landscaping of the entire Lot shall be completed within nine (9) months of the date of substantial completion of the Dwelling Unit.

15.2.4 All landscaping shall be maintained strictly in accordance with the Landscaping Guidelines adopted by the Declarant, which shall be subject to change.

15.2.5 Upon written request of the ARC, any non-conforming landscaping may be removed and the property restored to its original condition by the Association or its agent, forthwith and without being guilty of a trespass, and at the expense of Owner or resident.

15.3 Snow Removal. The Association shall only be responsible to remove ice and snow accumulations from the Park Town Homes Common Area and Facilities, including the private drives, lanes and alleys. Each Owner is responsible for the removal of ice and snow accumulations from his Lot, sidewalks leading solely to his lot and any adjoining steps, landings and porches.

15.4 Easements. Easements and rights of way for the installation and maintenance of utilities, drainage systems and facilities, and irrigation are reserved, as set forth herein and in the legal descriptions of the Property.

15.4.1 Within these easements and rights of way, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way.

15.4.2 The easement and right of way area of each Lot and all improvements within said area shall be maintained continuously by their Owners, excepting those improvements for which a public authority or utility company is expressly responsible.

15.5 Slope and Drainage Control. No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Lot ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels.

15.5.1 The slope control area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, excepting those improvements for which a public authority or utility company is expressly responsible.

15.5.2 It shall be the responsibility of the Owner to see that his Lot strictly conforms with the grading and drainage plan established by the Declarant, City and/or Summit County.

15.6 Procedures for Approval of Plans and Specifications. The ARC shall review and approve plans for all buildings proposed for erection, placement, or alteration within the Project. The City may require that building permit applications show evidence that the Architectural Control Committee has approved each building plan. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges, by acceptance

of a deed or other document of conveyance, that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

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

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

15.9 Limitation of Liability. Neither the Declarant nor the ARC, or any of their employees, agents, representatives or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Neighborhood Declaration, nor for any structural or other defects in any work done according to such plans and specifications. By accepting a deed or other document of conveyance to a Lot, each Owner agrees to and shall defend, indemnify, save and hold the Declarant and the ARC, and their employees, agents, representatives or consultants, harmless from any and all loss, damage or liability they may suffer, including defense costs and attorney fees, as a result of any claims, demands, actions, costs, expenses, awards or judgments arising out of their review or approval of architectural designs, plans and specifications.

15.10 Professional Architects and Designers. Designs submitted for approval must be prepared by architects or by qualified residential designers of outstanding ability whose previous work must be available for inspection and evaluation as a part of the approval process.

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

15.13 Enforcement of Architectural Guidelines. Any construction, installation, alteration, or other work done in violation of this Neighborhood Declaration shall be considered to be nonconforming.

15.13.1 Upon written request from the ARC an Owner shall at his own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work.

15.13.2 Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser.

15.14 Private fencing is not allowed without the express prior written consent of the Architectural Review Committee. Common fencing will be maintained by the Master Association or, where appropriate, the Association.

16. Leases. All Park Townhomes must be owner-occupied in accordance with Section 5.3 of the Deed Restrictions recorded as document entry # \_\_\_\_\_ on the \_\_\_ day of \_\_\_\_\_, 201\_\_\_ in the office of the Summit County Recorder. At the sole discretion of the City, leasing may be allowed for extenuating circumstances but the approval must be expressed in writing to be valid.

16.1 Affordable Homes and Deed Restricted Lots in this Project may at the City's sole discretion be subject to City renting requirements or restrictions, in whole or in part.

16.2 If and when the Deed Restrictions against Lots in this Project are permanently removed, an Affordable Home or formerly Deed Restricted Lot may be rented if (a) this Section 16 of the Declaration is amended to permit such rentals, (b) the proposed amendment is approved by at least two thirds (2/3) of the total ownership interest in this Project and the City, and (c) a written instrument is duly signed and recorded.

17. Easement -- Support, Maintenance and Repair. There is hereby reserved and the Association is hereby granted a non-exclusive easement over, across, through, above and under the Lots for the purposes of enforcing the Project Documents.

18. Liability of Owners and Residents For Damages. Each Owner, Resident or Permittee shall be liable to the Association, or other Owners for damages to person or property in the Property caused by his intentional misconduct, recklessness, carelessness or negligence.

19. Encroachments. If any part of the Common Area and Facilities encroaches or shall hereafter encroach upon a Building or Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Building encroaches or shall hereafter encroach upon the Common Area and Facilities, or upon an adjoining Building or Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Area and Facilities, Buildings

or Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Final Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

20. Board of Directors. The Association shall be governed, directed and managed by a Board of Directors comprised of three (3) natural persons who shall be duly qualified and elected (or appointed).

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

21.1 Access. To enter into or upon any Lot to (1) make repairs to and to do other work necessary for the proper maintenance and operation of any Park Town Homes Common Area and Facilities during reasonable hours and after reasonable notice to the occupant of the Lot; and (2) for making emergency repairs necessary to prevent damage to the Park Town Homes Common Area and Facilities or to another Lot, provided that a reasonable effort is made to provide notice to the occupant of the Lot prior to entry.

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

21.3 Execute Documents. To execute and record, on behalf of all Owners, any amendment to the Neighborhood Declaration or Park Town Homes Final Plat which has been approved by the vote or consent necessary to authorize such amendment.

21.4 Standing. To sue and be sued.

21.5 Enter Into Contracts. To enter into contracts which in any way concern the Park Town Homes, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

21.6 Transfer Interests in Real Property. To exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Members of the Association.



21.7 Purchase. To purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least sixty seven (67%) of the Members of the Association.

21.8 Add Property. To add any real property, or interest therein, obtained pursuant to subparagraph 21.7 above to the Park Town Homes, so long as it has been approved by at least sixty seven (67%) of the Members of the Association.

21.9 Promulgate Rules. To promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Board of Directors in carrying out any of its functions or to ensure that the PARK TOWN HOMES is maintained and used in a manner consistent with this Neighborhood Declaration.

21.10 Meetings. To establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of meetings.

21.11 Delegation of Authority. To delegate its responsibilities over the management and control of the Park Town Homes to a professional manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

21.12 Interpret and Enforce Project Documents. To interpret and enforce this Neighborhood Declaration, the Bylaws, Rules and Regulations, and Articles of Incorporation.

21.13 Borrow. To borrow funds and pledge assets of the Association, so long as the transaction has been approved in advance by at least sixty seven (67%) of the Members of the Association.

21.14 All other Acts. To perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions on behalf of the Owners.

22. Delegation of Management Responsibilities. The Property shall be managed by a professional manager, selected by the Declarant or, upon the termination of the Period of Declarant's Control, the Board of Directors. The agreement for professional management of the Park Town Homes, and any contract for goods or services, or any lease which is entered into by the Board of Directors shall provide, or be deemed to provide hereby, that either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and no contract may be for an initial term greater than one (1) year.

23. Annual Meeting of the Association. The Association shall meet on a periodic basis at least annually at a time and place set by the Board of Directors.

24. Lists of Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Board of Directors shall maintain up-to-date records showing: (a) the name of each person who

is an Owner, the address of such person, and the Lot which is owned by him; (b) the name and address of each resident; (c) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity; and (d) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board of Directors with written evidence verifying that the transfer has occurred, that the Deed or other instrument accomplishing the transfer is of record in the Office of the County Recorder, and that the transferee has received a copy of the Neighborhood Declaration and Bylaws then in force. The Board of Directors may for all purposes act and rely on the information concerning ownership in its records or, at its option, the official records of the County Recorder. The address of any Owner shall be deemed to be the address of the Lot owned by such person unless the Board of Directors is otherwise advised in writing.

25. Limitation on Assessments for Capital Improvements and Additions. The affirmative express written consent of at least two-thirds (2/3) of the total ownership interest in this Project is necessary and sufficient to approve a Special Assessment for the collection and/or expenditure of funds for a betterment, upgrade, addition or capital improvement to or to change the nature of this Project not otherwise covered by the annual budget or the Reserve Fund or Funds..

26. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot or Building will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

27. The Maintenance Responsibility of the Association or Area of Common Responsibility. The Association is responsible to maintain, repair, replace, and keep the Park Town Homes Common Area and Facilities in a state of good condition and repair. In addition, the Association is responsible for providing, contracting and/or subcontracting for the care, maintenance, repair and replacement of the roofs and exterior surfaces of any Building in order to maintain quality of construction and uniformity of appearance; provided, however, each Owner, as part of his Area of Personal Responsibility, is personally and individually responsible to pay for his Building Exterior Assessment, and Individual Assessment, which shall not be considered a Common Expense.

28. The Maintenance Responsibility of the Owners or Area of Personal Responsibility. Each Owner shall maintain, repair, replace, and keep his Lot and any property he privately owns in a state of good condition and repair, including by way of illustration but not limitation his Lot, driveway and walkways servicing only his Dwelling Unit, and the following improvements (whether or not such improvements are located within his Lot), including without limitation all individual services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, fixtures, windows and window systems, glass, doors and door

systems, garage doors and garage door systems, patios, balconies and decks, plumbing fixtures, systems and lateral pipes or valves, and all concrete, including the driveway, sidewalks, walkways, steps, porch and landing serving or servicing only his Lot, including any damage caused thereby and not covered by insurance. Each Owner shall also maintain any Common Area or Facility or Park Town Homes Common Area and Facility appurtenant to his Lot broom clean and free of debris, including his driveway, walkways, porch, landing, patio, deck or balcony, broom clean and free of grease spills, leaks, personal property, trash, litter and debris. All maintenance, repairs and replacements are subject to the approval of the Board of Directors as to construction materials, quality of construction and installation, and uniformity of appearance. No Owner shall allow his Lot or the Common Area and Facilities or Park Town Homes Common Area and Facility adjacent thereto to detract from the health, safety or uniform appearance or design of the Project. Any repairs or replacements to physical improvements Visible to a Neighboring Property, including by way of illustration but not limitation all driveways and walkways appurtenant to a Lot, are conditional upon and subject to the prior written approval of the Board of Directors in order to maintain quality of construction and uniformity of appearance. Any such repairs not approved by the Board of Directors shall be considered unacceptable and non-conforming, and shall be removed, and the property restored to its original condition, upon delivery of a written request.

29. Garbage Removal. Garbage service by the City will be limited to service from public streets only.

29.1 Owners shall place their garbage in suitable plastic bags, sacks or containers and deposit them immediately into the designated garbage containers.

29.2 Garbage containers shall be stored so as not to be Visible From a Neighboring Property or the street except on garbage pick-up day each week and then for a period of no longer than twenty four (24) hours.

30. Standard of Care - Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition, consistent with Community Standards. If a dispute arises between a Owner or resident and the Association as to the condition of a Lot, the decision of the Board of Directors shall be final, binding and conclusive.

31. Changes to Areas of Personal or Common Responsibility. The Board of Directors may unilaterally add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Owners.

32. Declarant's Rights to Change Design and Construction. The Declarant may unilaterally make changes to the design and construction of the improvements located in or on the Property without the consent of the Board of Directors or Owners.

33. Structural Alterations by Owner. No Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the non-Lot areas of the Park Town Homes, if any, without the prior written consent of the Board of Directors.

34. Common Expenses. Each Owner by virtue of his acceptance of a Deed or other document of conveyance to a Lot covenants to and shall pay his share of the Common Expenses, and Assessments, including Additional Charges and Individual Charges to the Association in accordance with the Neighborhood Declaration

34.1 Declarant. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lots owned by it until such time as: (1) the physical structures are substantially completed; (2) certificates of permanent occupancy are issued and the Lots are sold or rented; or (3) Declarant elects in writing to pay the Assessments, whichever first occurs.

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

34.3 Creation of Assessments. Since the Assessments shall pay for the common expenses of the Association, as shall be determined by the Board of Directors from time to time, each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed by the Board of Directors.

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

34.4.1 Itemization. The Budget shall set forth an itemization of the anticipated Common Expenses (including that portion earmarked for the reserve account(s) and the Association's proportionate share of the Master Assessment for the twelve (12) month calendar year, commencing with the following January 1.

34.4.2 Basis. The Budget shall be based upon advance estimates of cash requirements by the Board to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, including the Association's share of the Master Assessment, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board is required or permitted to maintain, common lighting and heating, common water charges, trash collection, storm drain fees, common sewer charges, sewer maintenance costs, carpeting, painting, repairs and maintenance of the Park Town Homes Common Areas and Facilities, and replacement of those elements of the Park Town Homes Common Areas that must be replaced on a periodic basis, wages for employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and

by reason of this Neighborhood Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

34.4.3 Approval or Disapproval. The Owners may call a special meeting within forty-five (45) days of the meeting providing the proposed Budget to vote to disapprove the Budget, although to set it aside and to reject a proposed Budget requires the affirmative written consent of at least a majority of total ownership. If the new budget is disapproved, then the prior year's budget continues.

34.5 Apportionment. The Common Expenses and voting rights of the Property shall be distributed among and shall be charged to the Lot Owners equally.

34.6 Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the percentage of ownership interest in the Association. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Board of Directors fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

34.7 Additional Services. The Board of Directors may but is not obligated to add to the Assessment of any particular Lot or Lot Owner additional charges for individual services offered or provided, not a Common Expense.

34.8 Personal Obligation of Owner. Owners are liable to pay all Assessments assessed and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (a) the Owner of both the legal and equitable interest in any Lot; (b) the owner of record in the offices of the County Recorder of Summit County, Utah; and (c) both the Buyer and Seller under any executory sales contract or other similar instrument.

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

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

34.11 Reserve Account. The Board of Directors shall establish and maintain a reserve account or accounts to pay for budget shortfalls, unexpected operating expenses, capital

improvements, major repairs and deferred maintenance in accordance with the statutory requirements.

34.12 Analysis Report and Presentation. The Board of Directors shall prepare and update in accordance with the statutory requirements a written Reserve Analysis or Study. The Directors are responsible to present to owners each year the amount of money that should be deposited into the reserve account each year to properly or adequately satisfy the recommendations of the plan for deferred maintenance adopted, based, at least in part on the Reserve Study. The contents of the Reserve Study shall be comprehensive, complete and accurate, and must address not only the systems, equipment and facilities but the components effectively. The Directors provide a summary of the most recent Reserve Study to the all Owners each year, even if they do not attend the annual meeting. The full Reserve Study (and any updates) must be made available to Owners upon request. The Association must now include a specific Reserve Fund line item in its annual budget. The Board of Director must establish the amount of the Reserve Fund line item; and set forth the steps for the Owners to veto the Board's Reserve Fund line item in accordance with the statutory requirements.

34.13 Acceleration. Assessments shall be paid in the manner and on dates fixed by the Board of Directors who may, at its option and in its sole discretion, elect to accelerate the entire annual Assessment for delinquent Owners. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Board of Directors otherwise decides acceleration is not in its best interest, the Board of Directors, at its option and in its sole discretion, may elect to decelerate the obligation.

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

34.15 Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which insofar as it adversely affects the Association's lien for unpaid Assessments each Owner by accepting a deed or other document of conveyance to a Lot hereby waives.

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

34.17 Suspension of Right to Receive Utility Services. At the discretion of the Board of Directors, the right of an Owner or Lot to receive utility services paid as a common expense may be suspended.

35. Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following and Section 25 above:

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

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

36. Benefit Assessments. If an Owner has the choice to accept or reject the benefit, then the Board of Directors shall have the power and authority to assess an Owner in a particular area as follows:

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

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

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

37. Collection of Assessments. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10th day of the month in which they were due.

37.1 Delinquent Assessments. Any Assessment not paid when due shall be deemed delinquent and a lien securing the obligation shall automatically attach to the Lot, regardless of whether a written notice is recorded.

37.2 Late Fees and Default Interest. A late fee may be charged in a sum to be determined by the Board of Directors on all late payments. Default interest at a rate to be determined by the Board of Directors shall accrue on the outstanding balance of any account.

37.3 Lien. If any Lot Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Board of Directors or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Lot in favor of any assessing Lot or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

37.4 Foreclosure of Lien and/or Collection Action. If the Assessments remain unpaid, the Association may, as determined by the Board of Directors, institute suit to collect the amounts due and/or to foreclose the lien judicially or non-judicially.

37.5 Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

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

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

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

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



37.9.1 A Lot may be auctioned publically and sold through either a non-judicial foreclosure (like a bank foreclosing a deed of trust) or through judicial foreclosure. A court order of sale is required for a judicial foreclosure which includes a 6-month redemption period.

37.9.2 For purposes of a non-judicial foreclosure, when a person accepts a deed or other document of conveyance to a Lot, it is considered the same, like a bank and a deed of trust, as conveying the Lot in trust to as trustee<sup>4</sup> appointed by the Association to secure payment of all assessments and costs of collection.

37.9.3 The Association must appoint a qualified trustee, by signing and recording in the office of the county recorder a written substitution of trustee form in order to foreclose upon a Lot non-judicially.<sup>5</sup>

37.9.4 At least thirty (30) days prior to starting its non-judicial foreclosure, the Association must send written notice to the Owner informing him or her of the Association's intent to foreclose non-judicially and the Owner's right to demand judicial foreclosure. The notice must be in the form provided by the statute and sent by certified mail.<sup>6</sup> The Owner may object to the non-judicial foreclosure by sending a written demand for judicial foreclosure. The Owner's objection and written demand must be sent within fifteen (15) days. The Owner's objection and written demand must also be sent by certified mail.

37.9.5 The Association may not use a non-judicial foreclosure to enforce a lien if the Owner mails the Association a written demand for judicial foreclosure: (a) by U.S. mail, certified with a return receipt requested; (b) to the address stated in the Association's Notice of Non-judicial Foreclosure and Right to Demand Judicial Foreclosure under Subsection

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<sup>4</sup> Bank, Title Company or Utah attorney

<sup>5</sup> No redemption period. A notice of default is prepared and recorded. The Owner has 90 days to cure the default or the Unit may be sold by the Trustee. The notice of sale usually takes 30+ days. A non-judicial foreclosure takes approximately 120 days.

<sup>6</sup> **Error! Main Document Only.**NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE

The (insert the name of the association of unit owners), the association for the project in which your unit is located, intends to foreclose upon your unit and allocated interest in the common areas and facilities using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the association's lien against your unit and to collect the amount of an unpaid assessment against your unit, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that "I demand a judicial foreclosure proceeding upon my unit", or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within fifteen (15) days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is (insert the address of the association of unit owners for receipt of a demand).

(4); and (c) within fifteen (15) days after the date of the postmark on the envelope of the Association's Notice of Non-judicial Foreclosure and Right to Demand Judicial Foreclosure.

37.9.6 The Association must follow the provisions of the law applicable to the non-judicial foreclosure of deeds of trust.

37.10 Providing Payoff Information. The Association may charge a fee for providing Association payoff information needed in connection with the closing of a Unit Owner's financing, refinancing, or sale of the Owner's Unit (the "Payoff Fee"). The Association may not require that the Payoff Fee be paid before closing and the Payoff Fee may not exceed the statutory limit without a change in the statute. If the Association fails to provide the payoff information requested within five (5) business days after the closing agent requests the information may not enforce a lien against that Unit for money due to the association at closing; provided, however, a request shall not be considered effective unless the request is conveyed in writing to the designated contact person for the Association on record with the State of Utah and contains: (1) the name, telephone number, and address of the person making the request; and (2) the facsimile number or email address for delivery of the payoff information; and (3) is accompanied by a written consent for the release of the payoff information: (a) identifying the person requesting the information as a person to whom the payoff information may be released; and (b) signed and dated by an Owner of the Unit for which the payoff information is requested.

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

39. Insurance.

39.1 Property and Liability Insurance Required.

(a) The Association must maintain, to the extent reasonably available, property insurance on physical structures of all attached Dwelling Units, Limited Common Area and Common Area.

(b) The Association must maintain to the extent reasonably available adequate Liability Insurance for the Common Areas and Facilities.

(c) If property or liability insurance is not available, then the Association must notify Owners within seven (7) days.

(d) The Association may but is not required to carry other types of insurance.

(e) An Owner's act or omission may not void a policy.

39.2 Property Insurance. The Property Insurance, which shall include all Common Areas and Facilities, must be provided by blanket coverage (as opposed to a schedule listing each Building separately) and may not be less than 100% of the full replacement cost, which must be reviewed at each renewal.

(a) The Property Insurance shall include coverage for any and all fixtures, improvements, or betterments installed by an Owner, floor coverings, cabinets, heating and plumbing fixtures, paint, wall coverings, windows, and any item permanently attached to a dwelling.

(b) The Association is not required to insure a Dwelling Unit if the Dwelling Unit is not physically attached to another Dwelling Unit.

(c) When the Association has a master policy of Property Insurance and the Owner also has Property Insurance, the Association's insurance shall be considered **primary**; provided, however, the Owner's insurance applies and the Owner's insurance policy is considered the primary coverage up to the amount of the master policy deductible. If the Owner has no insurance, the he or she is personally responsible for the loss up to the amount of the deductible.

(d) An Owner who suffers a loss and makes a claim on The Association's Property insurance policy is responsible for payment of the Association's deductible; provided, however, if two (2) or more Owners suffer loss in a single event, they are each responsible for payment of a portion of the Association's deductible based on the percentage of the loss they each suffered. The deductible, which an Owner is required to pay, applies to the claim on both the Dwelling Unit and any appurtenant Limited Common Area; that is, only one deductible applies.

(e) If an Owner does not pay his or her share of the loss, the Association may levy an Assessment against the Owner and his or her Dwelling Unit in a sum equal to his or her share of the loss.

(f) The Association must set aside in escrow an amount equal to the amount of the master policy deductible or \$10,000 (unless by statute a higher amount is required in which event the statutory requirement shall govern and control), whichever is less.

(g) The Association must give notice to all Owners of their obligation to pay the Association's deductible. The Association shall also give notice of any change in the amount of the deductible. If the Board of Directors does not provide the required notice of an increase in the amount of the deductible on the Association's Property insurance, then the Association is only liable for the amount of the undisclosed increase in the deductible if the Owner does not have adequate coverage for the full deductible.

(h) The Association is not required to submit a claim to the Association's insurance carrier if the Board of Directors determines that the amount of the claim is likely not to exceed the amount of the Association's insurance deductible.

(i) The insurer for the master policy shall adjust with the Association a loss covered under the association's policy.

(j) The Association receives insurance payments in trust for the owners and insurance proceeds received by the Association must first be disbursed for the repair or restoration of the damaged property.

39.3 Liability Insurance. The Association shall obtain a public liability policy covering the Common Area and Facilities, sewer laterals, including the backup of sewer laterals, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have coverage limits common to this area for this kind of project in the opinion of an independent insurance agent but not less than a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection. The Association may insure for more than this but not less. Each Owner is an insured person under the Association's liability policy that insures an owner's interest against liability arising from the Common Area or membership in the Association.

39.4 Damage to a Portion of the Project- Insurance Proceeds. Repairs must be done within a reasonable amount of time. If the associated expenses to repair are in excess of the insurance proceeds, such costs will be considered a Common Expense.

39.5 Miscellaneous.

(a) The Association may but is not obligated to purchase additional endorsements or coverage, including by way of illustration but not limitation, directors and officers insurance, a fidelity bond, earthquake insurance.

(b) For those rare situations that may occur; such as dealing with a project that is terminated and distributions to lien holders and Owners if the Project is destroyed, the provisions of the Utah Community Association Act shall in all instances govern and control.

(c) If any provision of this Section is held to be (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This Section will be construed and enforced as if the (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this Section will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Section. Furthermore, in lieu of each such (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this Section, a provision as similar in terms to such (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

40. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Park Town Homes.

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

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

40.1.2 "Partial Destruction" shall mean any other damage or destruction to the Park Town Homes or any part thereof.

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

40.1.4 "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

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

40.1.6 "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

40.1.7 "Restored Value" shall mean the fair market value of the Park Town Homes after Restoration as determined by an MAI or other qualified appraisal.

40.1.8 "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Park Town Homes to its former condition.

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

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

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

40.4 Notices of Destruction or Obsolescence. Within thirty (30) days after the Board of Directors has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written

description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Neighborhood Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

40.5 Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Board of Directors or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Park Town Homes Common Area and Facilities. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

40.6 Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Board of Directors may elect to make a special assessment to pay for the deficiency.

40.7 Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Lots will not be the subject of Restoration (even though the Park Town Homes will continue as a planned residential development) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Park Town Homes Common Area and Facilities shall be immediately reallocated to the remaining Lots.

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

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

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

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

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

40.13 Termination of Legal Status. Any action to terminate the legal status of the Property after Substantial Destruction or Condemnation occurs shall be agreed to by Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association, by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Lots that are subject to mortgages held by eligible holders, sixty-seven (67%) of all of the Lot and Lot Owners in the Property, and the Declarant until the expiration of the Period of Declarant's Control.

The termination of the legal status of the Park Town Homes for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Lots. However, implied approval may be assumed when an Eligible Mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

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

41.1 Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and

41.2 Change In Ownership. Any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

42. Mortgagee Protection. The lien or claim against a Lot for unpaid Assessments levied pursuant to the Neighborhood Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

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



42.2 Books and Records Available for Inspection. The Management Board of Directors or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Neighborhood Declaration, Bylaws, and administrative rules and regulations concerning the Park Town Homes, as well as the books, records, and financial statements of the Board of Directors and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available. The Association shall: (a) keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and any other expenses incurred; and (b) make those records available for examination at a convenient hour during the regular work week no later than fourteen (14) days after the Owner makes a written request to examine the records.

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

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

42.4.1 Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Park Town Homes or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

42.4.2 Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty (60) days.

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

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

42.5 Consent Required. Any proposed action which would require the consent of a specified percentage of Mortgagees, if proper statutory notice is given to a Mortgagee or

other creditor, then a legal presumption is created that the Mortgagee and/or creditor consented, absent the delivery of a written objection.

43. Amendment.

43.1 General. Except as provided elsewhere in this Neighborhood Declaration, including by way of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment to this Neighborhood Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the Association cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any Amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the Association. In such instrument an officer or delegate of the Association shall certify that the vote required by this Section for Amendment has occurred.

43.2 Initial Declarant Right to Amend. The Declarant alone may amend or terminate this Neighborhood Declaration prior to the closing of a sale of the first Lot .

43.3 Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained in this Neighborhood Declaration to the contrary, this Neighborhood Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (i) necessary to correct typographical errors or inadvertent omissions; (ii) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (iii) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots s subject to this Neighborhood Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Lot unless any such Owner shall consent thereto in writing.

43.4 Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control. Prior to the expiration of the Period of Declarant's Control, Declarant may unilaterally amend this Neighborhood Declaration for any other purpose; provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owner or Member hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner or Member.

43.5 To Satisfy Requirements of Lenders or Satisfy the Requirements of the Development and Design Guideline Agreements. Notwithstanding anything to the contrary, Declarant reserves the unilateral right to amend all or any part of this Neighborhood Declaration to such extent and with such language as may be requested by a federal or state agency to satisfy the requirements of the Development and Design Guideline Agreements or the Utah State Department of Real Estate (or similar agency), HUD, FHA, VA, Fannie Mae, Freddie Mac, and so forth, and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Neighborhood Declaration or approval of the sale of Lots s, or by any

federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot , or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots and Memberships and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Declarant, Declarant shall have the unilateral right to amend this Neighborhood Declaration to restore such control.

43.6 Declarant's Rights. No provision of this Neighborhood Declaration reserving or granting to Declarant the Developmental Rights shall be amended without the prior express written consent of Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

44. Declarant's Sales Program. Anything to the contrary notwithstanding, for so long as Declarant continues to own any of the Lots, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Neighborhood Declaration. Until the Declarant has sold all of its Property in the Property, neither the Owners, the Association nor the Board of Directors shall interfere with the completion of improvements and sale of all remaining Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

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

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

44.3 Use of Park Town Homes Common Area and Facilities. Declarant shall have the right to use the Park Town Homes Common Area and Facilities located in the Park Town Homes.

44.4 Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the

preceding portion of this Section. Until one hundred and twenty (120) days after the date of closing of Declarant's last Lot in the Park Town Homes, Declarant shall have the right to remove from the Park Town Homes any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

45. Limitation on Improvements by Association. Until one hundred and twenty (120) days after the date of the closing of the sale of Declarant's last Lot or Dwelling Unit in the Property, neither the Association nor the Board of Directors shall, without the written consent of Declarant, make any improvement to or alteration in any of the Park Town Homes Common Area and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Park Town Homes Common Area and Facilities as originally created or constructed by Declarant.

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

47. Combination of Lots. An Owner of two or more adjoining Lots shall have the right upon approval of the Board of Directors, City, and the mortgagees of said Lots, to combine one or more adjoining Lots or portions thereof and to alter or amend the Neighborhood Declaration and map to reflect such combination.

47.1 Such amendments may be accomplished by the Owner recording an amendment or amendments to this Neighborhood Declaration, together with an amended map or maps containing the same information with respect to the altered Lots as required in the initial Neighborhood Declaration and map with respect to the initial Lots. All costs and expenses required in such amendments shall be borne by the Owner desiring such combination.

47.2 All such amendments to the Neighborhood Declaration and Park Town Homes Final Plat must be approved by City and attorneys employed by the Board of Directors to insure the continuing legality of the Neighborhood Declaration and the Map. The cost of such review by the attorneys shall be borne by the person wishing to combine the Lots.

47.3 Any amendments of the Neighborhood Declaration or Park Town Homes Final Plat pursuant to this Section shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the Association which are appurtenant to the Lots involved in the alterations. The percentage of undivided interest in the Association appurtenant to all other Lots shall not be changed. All such amendments must, in all instances, be consented to by the Board of Directors and also all other persons holding interest in the Lots affected. The consent of

other Owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the Association remain unchanged.

48. Alterations to the Park Town Homes Common Area and Facilities. Anything to the contrary notwithstanding and until the termination of the Period of Declarant's Control, the Declarant may create and/or make changes to the Park Town Homes Common Area and Facilities without the consent of either the Association or the Board of Directors; provided, however, no Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the Park Town Homes Common Area and Facilities including but not limited to the construction or installation of any additions, the extension or enclosure of any existing structures not shown on the approved plans and specifications, without the prior written consent of the Board of Directors.

49. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right (as a Class B Member) to select the Members of the Board of Directors and may elect to transfer the management of the Park Town Homes to a Board of Directors elected by the Owners. Upon the termination of the Period of Declarant's Control, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date"). Thereupon, the Owners shall call a meeting to elect the Members of the Board of Directors to take office as of the Transfer Date; provided, however, Declarant may appoint up to one member of the Board of Directors until the year 2056. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Board of Directors.

50. Interpretation. To the extent Utah law is consistent with this Neighborhood Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Neighborhood Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders.

51. Severance. The invalidity or unenforceability of any portion of this Neighborhood Declaration shall not affect the validity or enforceability of the remainder hereof. If any covenant, condition, restriction, part, term or provision of this Neighborhood Declaration is deemed to be inconsistent, incongruent or in conflict with (the "Inconsistent Provision") the Master Declaration, Development and Design Guideline Agreements, any approval guidelines of conventional lenders or federal agencies for the financing, insuring or the guaranty of the Property, or any part thereof (the "Required Provision"), then (a) the rights and obligations of the parties shall be construed and enforced as if the Neighborhood Declaration did not contain such

Inconsistent Provision, and (b) the Required Provision shall be and is hereby incorporated herein by this reference, anything to the contrary notwithstanding.

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

53. Enforcement and Right to Recover Attorneys Fees.

53.1 General Remedies. Should the Association, Board of Directors or an aggrieved Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

53.2 Additional Remedies. In addition, the Board of Directors may impose the following sanctions after proper notice and the opportunity to be heard:

53.2.1 imposing Individual Charges and fines, which may be secured by a lien against the Owner's interest in the Property;

53.2.2 suspending an Owner's right to vote;

53.2.3 suspending any Person's right to use any of the Swim and Tennis Club and other recreational amenities located in the Park Town Homes Common Area and Facilities; provided, however, nothing herein contained shall authorize the Board of Directors to limit ingress or egress to or from a Lot or Dwelling Unit;

53.2.4 exercising self-help or taking action to abate any violation of the Project Documents in a non-emergency situation;

53.2.5 exercising self-help in any emergency situation (specifically including but not limited to the towing of vehicles that are in violation of the parking rules);

53.2.6 requiring an Owner at his sole expense to remove any structure or improvement in the Park Town Homes Common Area and Facilities, and

upon the failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the property and remove the violation and restore the property to its original condition, and such action shall not be deemed a trespass;

53.2.7 without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Project Documents; and

53.2.8 levying Individual Charges to cover costs and expenses incurred by the Association to bring an Owner into compliance.

53.3 The Board of Directors may exercise its business judgment in deciding whether to impose sanctions or pursue legal action against violators and shall consider common concerns when taking or deciding not to take formal action, such as a weak legal position, conflict with current law, technical violations, minor or collateral issue, and whether or not it is in Association's best interests to pursue the matter and, if so, to what extent.

54. Agreement to Share Costs. The Declarant or the Association may enter into a contract or agreement, which includes a Covenant to Share Costs, for the use of facilities or the procurement of services for the benefit of the Association, and the present and future Owners which obligates the Association and such Owners to share the costs of maintaining and/or operating the same.

55. Party Walls and Fences.

55.1 Each wall and/or fence which is built as a part of the original construction of the Units upon the properties and placed on the dividing line between the Units shall constitute a party wall or fence, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls or fences and liability for property damage due to negligence or willful acts or omissions shall apply.

55.2 The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall in proportion to such use.

55.3 If a party wall or fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

55.4 Notwithstanding any other provision of this Article, an Owner who by his negligent or willful acts causes the party wall or fence to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

55.5 The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

56. Agent for Service of Process. The President of the Association is the person to receive service of process. The initial Registered Agent is Christopher P. Gamvroulas and the initial office of the Registered Agent is 978 East Woodoak Lane, Salt Lake City, Utah 84117.

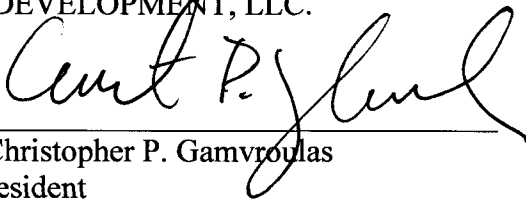
57. Rule Against Perpetuities. If the Declaration shall violate any applicable rule against perpetuities, accumulations, or any similar rule or law, the Declarant or Association shall terminate such Declaration on the date limited by such rule or law, and thereupon the property held in common by and shall be conveyed to the persons entitled thereto, notwithstanding any provision of this document to the contrary. No power of appointment granted hereunder shall be exercised in any manner that would violate any such applicable rule or law. Any attempted exercise of any such power that violates such rule or law shall be void, notwithstanding any provision of this document to the contrary.

58. Duration. The covenants and restrictions of this Neighborhood Declaration shall endure for a term of twenty (20) years from the date this Neighborhood Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

59. Effective Date. This Neighborhood Declaration, any amendment or supplement hereto, and any amendment or supplement to the Final Plat shall take effect upon its being filed for record in the Office of the County Recorder.

EXECUTED the 22 day of January, 2015.

DECLARANT:  
IVORY DEVELOPMENT, LLC.

By:   
Name: Christopher P. Gamvroulas  
Title: President

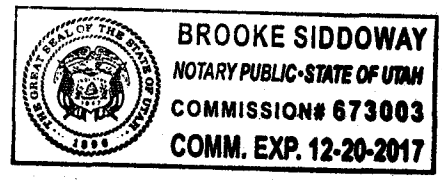


**ACKNOWLEDGMENT**

STATE OF UTAH                    )  
  SS:  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day January, 2015 by Christopher P. Gamvroulas, the President of IVORY DEVELOPMENT, LLC., a Utah limited liability company, and said Christopher P. Gamvroulas duly acknowledged to me that said IVORY DEVELOPMENT, LLC. executed the same.

Brooke Siddoway  
NOTARY PUBLIC



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**PARK TOWN HOMES**

The land referred to in the foregoing document as Park Town Homes is located in Summit County, Utah and more particularly described as follows:

Park City Heights Phase 1 Subdivision, Lots T-1 through T-28, inclusive, as shown on the official plat thereof on file and of record in the office of the Summit County Recorder; and All appurtenant Common Area and Facilities as shown on the official plats on file and of record in the office of the Summit County Recorder.

**EXHIBIT "B"**  
**BYLAWS**  
**OF**  
**PARK TOWN HOMES ASSOCIATION**

**ARTICLE I**  
**NAME AND LOCATION**

**Section 1 .01 Name and Location.** The name of the association is the PARK TOWN HOMES Association (the "Association"). The principal office of the corporation shall be located at 978 East Woodoak Lane, Salt Lake City, UT 84117, but meetings of Members and Board of Directors may be held at such places within the State of Utah, as may be designated by Board of Directors.

**ARTICLE II**  
**DEFINITIONS**

**Section 2.01 Definitions.** Except as otherwise provided herein or as may be required by context, all terms defined in Paragraph 1 of the Declaration shall have such defined meanings when used in these Bylaws.

**ARTICLE III**  
**MEETINGS OF MEMBERS OF THE ASSOCIATION**

**Section 3.01 Annual Meeting.** The Association shall meet as often as it deems reasonably necessary but not less than annually at a convenient time and place.

**Section 3.02 Special Meetings.** Special meetings of the Association may be called at any time by the President, by a majority of the Members of the Board of Directors, or by a petition signed by twenty-five percent (25%) of the Units.

**Section 3.03 Notice of Meetings.** Written notice of each meeting of the Association shall be given to each Owner by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to said Owner addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 3.04 Quorum.** The Owners present at a meeting of the Association in person or by proxy shall constitute a quorum for any action except as otherwise expressly provided in the Declaration.

**Section 3.05 Proxies.** At all Association meetings, each Owner may vote in person or

by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall expire, if not previously revoked, eleven (11) months after the date it is given by the Owner.

**Section 4.06 Voting.** Each Unit shall have one (1) vote. Online voting is allowed with adequate software and security.

#### **ARTICLE IV BOARD OF DIRECTORS AND TERM OF OFFICE**

**Section 4.01 Number.** The affairs of the Association shall be managed by a Board of Directors comprised of three (3) natural persons. The Declarant reserves and is hereby granted the right to appoint the Directors during the Period of Declarant's Control. Thereafter, each Director must be duly qualified and elected by the Owners. The initial Directors are Brad Mackay, Darin Haskell and Christopher P. Gamvroulas.

**Section 4.02 Replacement.** During the Period of Declarant's Control the Declarant shall appoint all replacement Directors. Thereafter, if a Director resigns or is otherwise unable or unwilling to serve, then the remaining Directors shall appoint a replacement to complete his term of office.

**Section 4.03 Term of Office.** Each Director on the Board shall serve a term of two (2) year; provided, however, for the initial appointments, one person shall be appointed for one (1) year and two people for two (2) years, so that thereafter the terms overlap.

**Section 4.04 Compensation.** No Director shall receive compensation for any service he may render to the Association as a Directors, although he may be reimbursed for his actual expenses incurred in the performance of his duties and may enter into an independent contract to provide other services. A Director may enter into a separate and independent contract with the Association to provide additional services for a fee.

**Section 4.05 Action Taken Without a Meeting.** The Board of Directors shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

**Section 4.06 Voting.** Each Director shall have one (1) vote. Online voting is allowed with adequate software and security.

**Section 4.07 Voting Representative on the Master Association.** The Board of Directors shall select a Delegate to serve as the voting representative for Park Town Homes Homeowners Association on the Master Association.

**Section 4.08 Managing Member.** Anything to the contrary notwithstanding, during the Period of Declarant's Control, the Board of Directors hereby assigns and delegates all of its rights, power and authority, as set forth in the Project Documents, to a Managing

Member selected or to be selected by the Declarant, who shall manage the Park Town Homes Common Areas and Facilities and administer the Project Documents for and in behalf of the Association and the Architectural Review Committee. The initial Managing Member shall be Christopher P. Gamvroulas.

**ARTICLE V  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 5.03 Powers.** The Association shall have all of the powers of a Utah non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing, the Association may act through its Board of Directors and shall specifically have the powers and duties set out in this Article V, including

**Section 5.03.1 Assessments.** The power and duty to levy Assessments on the Owners, and to enforce payment of such Assessments in accordance with the Declaration.

**Section 5.03.2 Association Property.** The right to own and/or lease the Association Property and the duty to maintain and manage the Common Areas and Facilities and improvements thereon. In particular the Association shall:

- a. Maintain and repair in an attractive, safe and functional condition the Common Areas and Facilities;
- b. Pay all taxes and Assessments levied upon the Common Areas and Facilities and all taxes and Assessments payable by the Association;
- c. Obtain any water, sewer, gas and electric services needed for the Common Areas and Facilities; and
- d. Do each and every other thing reasonable and necessary to operate the Common Areas and Facilities and the Association.

**ARTICLE VI  
OFFICERS AND THEIR DUTIES**

**Section 6.01 Enumeration of Officers.** The officers of the Association shall be a president and secretary, plus such other officers as the Board of Directors may from time to time by resolution create. The same individual may not hold the office of president and secretary at the same time. The officers need not be Directors.

**Section 6.02 Election of Officers.** The Board of Directors shall elect or appoint officers at the first meeting of the Board of Directors during each calendar year.

**Section 6.03 Term.** Each officer of the Association shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

**Section 6.04 Special Appointments.** The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine.

**Section 6.05 Resignation and Removal.** Any officer may be removed from office with or without cause by a majority vote of the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6.06 Vacancies.** A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 6.07 President.** The president shall (a) preside at all meetings of the Board of Directors and (b) see that orders and resolutions of the Board of Directors are carried out.

**Section 6.08 Secretary.** The secretary shall (a) record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Association, (b) keep the corporate seal of the Association (if any) and affix it (if available) on all papers requiring said seal, (c) serve notice of meetings of the Board of Directors and of the Association, (d) keep appropriate current record showing the Members of the Association together with their addresses and (e) perform such other duties as may be required by the Board of Directors.

## **ARTICLE VII COMMITTEES**

**Section 7.01 Committees.** The Board of Directors may appoint such committees as deemed appropriate in carrying out its purpose.

## **ARTICLE VIII BOOKS AND RECORDS**

**Section 8.01 Books and Records.** The books and records shall be kept with detailed accounts of the receipts and expenditures affecting the Tract, and the administration of the Tract, specifying the maintenance, repair and any other expenses incurred. The books and records, including any invoices, receipts, bills, proposals, documents, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general

business hours on working days at the times and in the manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices.

**Section 8.02 Signatures.** The Board of Directors shall determine who shall be required to sign checks, drafts, contracts, or other legally binding agreements.

**Section 8.03 Bookkeeping.** The accounting and financial statements for Association must be kept and prepared by either the property manager or an independent bookkeeper or accountant, who may not be a Director or an officer of the Association. A monthly profit and loss statement, balance sheet, and check register shall be sent or delivered by the bookkeeper or accountant to each Directors. The accountant or bookkeeper shall prepare and file all tax returns for the Association.

**Section 8.04 Audit.** Either a (a) majority vote of the Directors or (b) majority vote of all of the Owners is necessary and sufficient to require either a Compilation Report, Reviewed Statement or Audited Statement of the financial books and records of the Association.

## **ARTICLE IX AMENDMENTS**

**Section 9.01 Amendment to Bylaws.** These Bylaws may only be amended (a) unilaterally by the Declarant until the expiration of the Period of Declarant's Control or (b) the affirmative vote of a majority of the Directors, or (c) a majority of the Owners. In the event of a conflict between the decision of the Owners and the Board, the former shall in all respects govern and control.

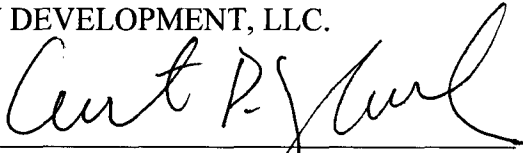
**Section 9.02 Conflict Between Articles, Bylaws and Declaration.** In the case of any conflict between the Declaration and these Bylaws or Articles of Incorporation, the former shall in all respects govern and control.

## **ARTICLE X MISCELLANEOUS**

**Section 10.01 Miscellaneous.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand this 22 day of January, 2015.

DECLARANT:  
IVORY DEVELOPMENT, LLC.

By:   
Name: Christopher P. Gamvroulas  
Title: President

**ACKNOWLEDGMENT**

STATE OF UTAH                    )  
  ss:  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day January, 2015 by Christopher P. Gamvroulas, the President of IVORY DEVELOPMENT, LLC., a Utah limited liability company, and said Christopher P. Gamvroulas duly acknowledged to me that said IVORY DEVELOPMENT, LLC. executed the same.

  
NOTARY PUBLIC

