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Parcel I.D. Nos. 21234760030000
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**AMENDED AND RESTATED
DECLARATION FOR BINGHAM JUNCTION**

See Exhibit A for description of property.

AMENDED AND RESTATED

DECLARATION

FOR

BINGHAM JUNCTION

THIS AMENDED AND RESTATED DECLARATION FOR BINGHAM JUNCTION ("Declaration") is made on the date hereinafter set forth by Littleton, Inc., a Delaware corporation with an address of 2100 East Bengal Blvd., #F203, Salt Lake City, Utah 84121 Attn: Robert L. Soehnen, President ("Founder").

RECITALS

A. Founder owns certain real estate in the City of Midvale, State of Utah (the "City"), more particularly described in Exhibit A attached hereto (the "Property") (Unless otherwise defined, capitalized terms used in these Recitals shall have the meaning set forth in Section 1.1).

B. The Property is currently zoned pursuant to the City's zoning ordinance as the Bingham Junction Zone ("BJ Zone") as set forth in § 17-7-9 of the Midvale City Code, as amended and as may be amended from time to time. The BJ Zone establishes both the procedural and substantive requirements for approval of development within the Property.

C. The Founder currently plans to facilitate the development of the Property in accordance with the Master Plan (defined below) and the BJ Zone by facilitating the development of the Property for a variety of mixed uses, which may include residential (single and multi-family), commercial, office, retail and industrial, sites for public open space and recreational and other amenities (the "Project").

D. The City and the Founder have entered into a Master Development Agreement dated April 6, 2005 pursuant to which the City has approved the Bingham Junction Large Scale Master Plan (the "Master Plan") for the development of the Project.

E. The Project encompasses a portion of the Midvale Slag Superfund site which has been, in the case of the North Parcel, or will be, in the case of the remaining Property, remediated in accordance with requirements of the U.S. Environmental Protection Agency ("EPA") and the Utah Department of Environmental Quality ("DEQ"). Project development will occur in accordance with applicable institutional controls as set forth in the Institutional Control Process Plans approved by the EPA and the DEQ and adopted by the City on July 13, 2004, as they may be amended from time to time (hereafter "Institutional Control Process Plans"). Attached hereto under Exhibit B are copies of the Institutional Control Process Plans for OU1 and OU2, which establish environmental controls governing the future development of the Project.

F. Founder, by this Declaration, desires:

- (i) to comply with the BJ Zone;
- (ii) to provide for the initial approval of design and development guidelines and criteria throughout the Project in accordance with the BJ Zone;
- (iii) to further and promote the interests, health, safety and welfare of the residents, occupants, tenants and guests of the Project in connection with the Institutional Controls; and
- (iv) to provide for the implementation of the powers and duties of the Board as set forth in this Declaration and the other Governing Documents of the Property.

G. Founder has caused the “Bingham Junction Master Property Owners’ Association, Inc.,” a Utah nonprofit corporation (the “Master Association”), to be incorporated under the laws of the State of Utah, as a master property owners’ association, for the purpose of exercising the functions set forth in this Declaration.

H. Founder has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance and preservation of the Property.

Now, therefore, Founder hereby declares as follows:

I.

DEFINED TERMS

1.1 Defined Terms. Each capitalized term in this Declaration shall have the meaning set forth in the Recitals or as set forth below, unless the context requires otherwise:

- (a) “Affordable Housing Plan” means that certain plan agreed to by the City and Founder or its affiliates as Exhibit C to the Reimbursement Agreement, respecting development and preservation of affordable housing in the Project, and any amendments thereto.
- (b) “Affordable Housing Restrictions” means those restrictions and/or covenants imposed by or at the discretion of Founder on a portion of the Property, as specifically designated by Founder, to comply with the terms of the Affordable Housing Plan, pursuant to applicable provisions of this Declaration.
- (c) “Arbor Gardner” means Arbor Gardner Bingham Junction Holdings, L.C., a Utah limited liability company or Arbor Gardner Bingham Junction Lands, L.C., a Utah limited liability company.
- (d) “Articles” means the Articles of Incorporation for the Bingham Junction Master Property Owners’ Association, Inc., as may be amended from time to time. The initial Articles are attached hereto as Exhibit C.

(e) "Assessment(s)" means an assessment for expenditures made or liabilities incurred by or on behalf of the Master Association in carrying out its responsibilities under this Declaration and including late charges, attorneys' fees, and interest charged by the Master Association.

(f) "Board" means the body described in Section 3.1 to act on behalf of the Master Association, as provided more fully in the Articles and the Bylaws.

(g) "Builder" means any developer, builder, general contractor, or other party (other than the Founder), who acquires one or more unimproved Units for the purpose of (i) constructing any initial Improvements upon the Unit or (ii) otherwise subdividing or developing the Unit in the ordinary course of its business in accordance with any applicable Small Scale Master Plan.

(h) "Bylaws" means the Bylaws adopted by the Master Association, as may be amended from time to time. The initial Bylaws are attached hereto as Exhibit D.

(i) "Declaration" means this Amended and Restated Declaration for Bingham Junction, as amended and supplemented from time to time

(j) "DEQ" means the Utah Department of Environmental Quality.

(k) "Development Agreement" means the Master Development Agreement dated April 6, 2005 between Littleton, Inc. and Midvale City respecting the Property and all documents and agreements attached thereto or referred to therein.

(l) "Development Policies" refer to: (1) the RD/RA Consent Decree effective as of November 16, 2004 by the United States District Court for the District of Utah in Case 2:99-CV-757TS, and all documents and agreements attached thereto or referred to therein; (2) the Agreement, Grant of Access to UDEQ and Covenant Not to Sue Decree effective as of November 16, 2004 by and between the State of Utah, Department of Environmental Quality and Littleton, Inc. and all documents and agreements attached thereto or referred to therein; (3) the Development Agreement; (4) the Reimbursement Agreement; (5) the Records of Decision for OU1 and OU2 of the Midvale Slag Site, and all documents and agreements attached thereto or referred to therein, and any amendments or Explanations of Significant Difference thereto; and (6) any approved Small Scale Master Plans.

(m) "Development Rights" means those development rights reserved by Founder as set forth in Article IX.

(n) "EPA" means the United States Environmental Protection Agency.

(o) "Founder" means Littleton, Inc. a Delaware corporation and any successor and/or assignee designated by written notice or assignment executed by the then Founder and executed by the transferee and recorded in the office of the Salt Lake County Recorder, to the extent of any rights or powers reserved to Founder are transferred or assigned to that party.

(p) "Governing Documents" means those documents listed in Section 2.4, as they may be amended from time to time.

(q) "Improvement(s)" means any and all buildings, structures, site work, landscaping, improvements, and other items placed on a Unit or installed within or upon a Unit.

(r) "Initial Small Scale Master Plan" means the initial Small Scale Master Plan submitted by a Builder for approval of the Master Association and the City with respect to any portion in the Project, but expressly does not include any subsequent Small Scale Master Plans (whether submitted by such Builder or a transferee of such Builder) that further subdivides such property and that are consistent with the initial Small Scale Master Plan.

(s) "Institutional Control Process Plans" refer to (1) the documents attached hereto as Exhibits B1 and B2, and including documents described therein, any of which may be amended from time to time as provided in the Institutional Control Process Plans, and (2) any modification of the Institutional Control requirements by EPA amendment of or explanation of significant difference to the Records of Decision for OU1 or OU2, including without limitation the Explanation of Significant Differences for OU1, dated February 14, 2006, attached hereto as Exhibit B3.

(t) "Institutional Controls" mean the institutional controls and restrictions on the development and use of the Property set forth in the Institutional Control Process Plans.

(u) "Master Association" or "Association" means the Bingham Junction Master Property Owners' Association, Inc., a Utah nonprofit corporation, and its successors and/or assigns. The Master Association is the same entity referred to as the "Master Property Owners' Association" in Section 5.1 of the Development Agreement. The Master Association, through the Master Association Chair (as defined in the Development Agreement and in the Bylaws), is vested with all of the rights and subject to all of the duties as the entity referred to in the BJ Zone as the "Property Owners Association" or "POA" for purposes of the BJ Zone.

(v) "Member" shall have the definition provided in the Bylaws.

(w) "Mercer" means Mercer Bingham Junction, LLC, a Utah limited liability company as the immediate transferee of a portion of the North Parcel from the Founder.

(x) "Neighborhood Association" means any association organized and established by Supplemental Declaration.

(y) "Neighborhood Design Guidelines" means the standards, criteria and/or guidelines for design, landscaping, or aesthetics imposed upon any portion of the Project by any Neighborhood Association pursuant to a Supplemental Declaration.

(z) "North Parcel" means the portion of the Property more particularly described on Exhibit E-1 attached hereto consisting of that portion of the Property north of Jordan River Boulevard in Salt Lake County.

(aa) "OU1" means that portion of the Property identified in the Development Policies as "Operable Unit No. 1."

(bb) "OU2" means that portion of the Property identified in the Development Policies as "Operable Unit No. 2."

(cc) "Owner" means any person or entity that owns a fee interest in any Unit.

(dd) "Period of Founder Control" means the period of time commencing on the date of recordation of this Declaration and expiring on the earlier of (i) December 31, 2015; (ii) at such time as Founder is no longer the Owner of at least ten percent (10%) of the Property; or (iii) at the written election of the Founder to terminate the Period of Founder Control.

(ee) "Property" means the real property described in Exhibit A attached hereto, together with all easements, rights and appurtenances thereto and the buildings and Improvements erected or to be erected thereon.

(ff) "Reimbursement Agreement" means the Tax Increment Reimbursement Agreement for the Bingham Junction Project between Littleton, Inc. and Midvale City respecting the Property and all documents and agreements attached thereto or referred to therein.

(gg) "Small Scale Master Plan" shall have the meaning provided in the Development Agreement and the BJ Zone.

(hh) "South Parcel" means the portion of the Property not comprising the North Parcel.

(ii) "Supplemental Declaration" means a written recorded instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof.

(jj) "Unit" means any portion of the Property that is independently owned, including condominium units, lots, or separate parcels. In order to qualify as a Unit, the Unit must be to be shown on an applicable plat map or deed.

II.

SCOPE OF DECLARATION; PROPERTY

2.1 Submission of Property to the Declaration. The Founder hereby submits the Property to the provisions of this Declaration.

2.2 Purpose and Intent. Founder declares that this Declaration is made for the purposes set forth in the Recitals. Founder anticipates that the Master Association's role will be limited to the implementation and enforcement of the Development Policies and the Institutional Control Process Plans.

2.3 Binding Effect. Founder hereby declares that all of the Property shall be held, sold, and conveyed subject to the easements, restrictions, powers, covenants and conditions of this Declaration, except such portions of the Property as are a part of or are subsequently dedicated to the City or to other governmental agencies as a right-of-way, a public street, road or highway or dedicated as and used as a public parks and open space. Founder declares that this Declaration shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof.

2.4 Governing Documents. The Governing Documents consist of the following (as may be amended from time to time): (a) this Declaration; (b) Articles; (c) Bylaws; (d) plats, maps, and deeds, as applicable; (e) Rules and Regulations; (f) Board resolutions and actions; and (5) the Development Policies. Portions of the Property may be subject to additional covenants, restrictions and easements, which a Neighborhood Association may administer. In such case, if there is a conflict between or among the Governing Documents and any such additional covenants or restrictions, or the governing documents or policies of any such Neighborhood Association, the Governing Documents shall control. Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants applicable to any portion of the Property from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control.

III.

MASTER PROPERTY OWNERS' ASSOCIATION

3.1 Master Association—Membership and Board. This Declaration will be managed, implemented, and enforced through the Master Association. Except as required by law or the Governing Documents, the Master Association will be managed by a Board of Directors ("Board"). Founder shall have the right to appoint each member of the Board during the Period of Founder Control. Notwithstanding any other provision of this Declaration or the Governing Documents, the following provision will govern the number, appointment and terms of the Board for the periods provided:

- (a) The initial Board will consist of four members.
- (b) The term for the initial Board members will expire on December 31, 2010.
- (c) So long as Mercer, Riverwalk Investment Holdings, Inc. or any of their affiliates owns ten percent (10%) or more of the North Parcel, two of the Board members shall be persons designated from time to time by Mercer;
- (d) So long as Arbor Gardner or any of its affiliates owns ten percent (10%) or more of the South Parcel, two of the Board members shall be persons designated from time to time by Arbor Gardner;
- (e) Except as provided in subsections (b) and (c) above, for Board members whose terms shall begin on January 1, 2011, such Board members shall be elected as provided in the Bylaws.

3.2 Master Association Powers. As provided more fully in the Articles and Bylaws (which may be amended from time to time), the Master Association, acting through the Board, shall have powers consistent with the intent and purposes of this Declaration to perform functions to benefit some or all of the Owners, as provided for in the Governing Documents. Without limiting these general powers, the Master Association, acting through the Board, shall have the specific power to, in its sole discretion:

- (a) enter into contracts;
- (b) employ staff, contractors, accountants, legal counsel, or other consultants as the Board deems desirable;
- (c) exercise such powers as authorized by the Articles, the Bylaws, or by Utah law;
- (d) provide initial approval or denial of any large or small scale master plans, or any revisions, changes or amendments thereto, for any portion of the Project or impose reasonable conditions for approval as provided in Article V;
- (e) in accordance with Section 5.2, provide initial approval or denial of any Neighborhood Design Guidelines or standards, or any material revisions, changes or amendments thereto, for any portion of the Project or impose such conditions for approval as it deems appropriate;
- (f) follow, institute, and enforce Institutional Control Process Plans to the fullest extent applicable to property owners' associations;
- (g) follow, institute, and enforce the requirements of the Development Policies;
- (h) levy and collect Assessments as provided in this Declaration.

3.3 In exercising the powers described in section 3.2, the Master Association may take actions even where such actions may not directly benefit all of the Owners.

3.4 Governing Documents. The Master Association shall be governed by the Governing Documents, as all of the same may be amended from time to time. Copies of the Governing Documents then in effect (as amended) shall be made available to all Owners at the Master Association offices during normal business hours.

3.5 Assent, Ratification and Approval. All Owners shall be deemed to have assented to, ratified and approved the general purposes of this Declaration and the power, authority, management responsibility and designation of the Master Association, acting through the Board as permitted under this Declaration.

3.6 Indemnification. To the fullest extent permitted by law, each officer of the Master Association and member of the Board shall be and is hereby indemnified by the Master Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by

or imposed upon such officer or director in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of being or having been an officer or director of the Master Association, or any settlements thereof, whether or not he or she is an officer or director of the Master Association at the time such expenses are incurred. This indemnification shall not apply in cases where an officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties. In the event of a settlement, the indemnification provided for in this Declaration shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Master Association.

3.7 Neighborhood Associations - Supplemental Declarations. The Master Association may delegate any of its powers, rights or authorities pursuant to this Declaration to one or more Neighborhood Associations within the Project.

IV.

COVENANT FOR ASSESSMENTS

4.1 Assessments—Authorization and Covenant.

(a) The Master Association is hereby authorized to levy separate Assessments on the South Parcel, on an as needed basis, for the sole purpose of funding the implementation and enforcement of this Declaration on the South Parcel, including without limitation funds to retain legal, engineering, accounting and other professional services as needed

(b) The Master Association is also hereby authorized to levy separate Assessments on the North Parcel, on an as needed basis, for the sole purpose of funding the implementation and enforcement of this Declaration on the North Parcel, including without limitation funds to retain legal, engineering, accounting and other professional services as needed.

(c) Unless otherwise provided in the Bylaws, the Master Association shall provide written notice of the levy of an Assessment to each Owner being assessed at the last address provided in writing by such Owner to the Master Association.

4.2 Statements of Account. The Master Association shall furnish to any Owner, upon written request, delivered personally or by certified mail, first class, postage prepaid, return receipt requested, to the Master Association's registered agent, a written statement setting forth the amount of all unpaid Assessments, if any, currently levied against such Owner's Unit. The statement shall be furnished within ten (10) calendar days after receipt of the request and shall be binding on the Master Association, the Board, and every Owner.

4.3 No Exemptions, Offsets, or Reductions. No Owner may become exempt from liability for payment of any Assessment to the Master Association by abandonment of Owner's Unit, by the Owner's failure or alleged failure to receive direct benefits related to any Assessment, or by operation of any form of waiver, including waiver of the Owner's right to vote or the Owner's use or enjoyment of common facilities. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason, including, without limitation, any claim that the Master Association or the Board or any other entity is not properly exercising its duties and powers under this Declaration.

4.4 Personal Obligation to Pay Assessments. The Owner of any Unit shall be deemed to covenant and agree to pay, in a timely manner, any and all Assessments as imposed by the Master Association pursuant to this Declaration. Assessments provided for in this Declaration, including fees, charges, late charges, attorneys' fees, fines and interest charged by the Master Association shall be the personal obligation of the Owner of such Unit at the time when the assessment or other charges become due.

4.5 Creation of Lien; Enforcement. The Owner of any Unit hereby agrees that (i) the Master Association may record in the office of the Salt Lake County Recorder a lien in the

amount of any past due sums owing to the Master Association pursuant to this Declaration (including, without limitation, fees, charges, assessments as set forth in Section 4.1 above, late charges, attorneys' fees, and interest); and (ii) the Master Association may enforce such lien in the same manner and to the same extent as a mechanics' lien pursuant to Section 38-1-1 *et seq.*, Utah Code Ann.

4.6 Effect of Non-Payment of Assessments. Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board, shall bear interest at the rate of interest, not to exceed ten percent per annum, as may be determined, from time to time, by the Board, and the Master Association may assess a reasonable late charge thereon as determined by the Board. Further, the Master Association may bring an action at law or in equity, or both, against the person(s) obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and/or may also proceed to foreclose its lien. An action at law or in equity by the Master Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments, thereof, may be commenced and pursued by the Master Association without foreclosing, or in any way waiving, the Master Association's lien. Foreclosure or attempted foreclosure by the Master Association of its lien shall not be deemed to estop or otherwise preclude the Master Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Master Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Master Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. The rights of the Master Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents).

V.

APPROVAL RIGHTS

5.1 Small Scale Master Plans. The Master Association shall have the right to approve any Small Scale Master Plan as required by the BJ Zone and may refuse to grant such approval if the Master Association is not satisfied that the Small Scale Master Plan meets the requirements and/or intentions of any Development Policy or the BJ Zone as then in effect.

5.2 Design Guidelines. The Design Guidelines for the Property shall be as provided in the BJ Zone; provided that the Master Association shall have the right to approve or disapprove any Neighborhood Design Guidelines, or any material amendment, change or substitution of any such Neighborhood Design Guidelines, that are less restrictive than the BJ Zone in any material respect, which such approval shall not unreasonably be withheld.

VI.

MAINTENANCE AND INSTITUTIONAL CONTROLS

6.1 Institutional Controls. All Owners and Members shall at all times comply with applicable Institutional Controls developed under the Institutional Control Process Plans. As

explained in the Institutional Control Process Plans, the City is responsible, through its planning, zoning, and building permit processes, for the oversight and enforcement of most of the Institutional Controls that apply to the Property. The Master Association, however, will have the responsibility for implementing, enforcing, and overseeing certain Institutional Controls (such as, for example, the oversight of certain construction activities that do not require a building permit), insofar as such Institutional Controls have been designed to be implemented through a property owners' association. The Master Association may delegate authority over Institutional Control compliance to one or more Neighborhood Associations but the Master Association cannot delegate its ultimate compliance and oversight responsibilities. Without limiting the Master Association's other remedies as provided herein, in the event any Owner fails to comply with applicable Institutional Controls, the Master Association with the approval of the Board shall be entitled, upon reasonable notice under the circumstances, to enter the Unit and perform such work as may be necessary in order to comply with such Institutional Controls, as the Master Association may deem reasonable. In that event, the Master Association will charge such Owner for such work through a Assessment against such Owner for, without limitation, the costs of such work and such additional fees, fines, and penalties as the Board may deem fit, in its sole discretion. The City is hereby authorized to enforce applicable Institutional Controls in the event that the Master Association fails to do so and shall have the same remedies as available to the Master Association, including without limitation any lien or assessments rights set forth in this Declaration. Furthermore EPA, in accordance with its authority under the RD/RA Consent Decree for the Midvale Slag Site, and DEQ, in accordance with its authority to enforce Institutional Controls in the form of restrictive covenants under the Utah Environmental Institutional Control Act, Utah Code § 19-10-101, *et seq*, are hereby authorized to enforce applicable Institutional Controls in the event and to the extent that both the Master Association and the City fail to do so.

VII.

GENERAL RESTRICTIONS

7.1 Safety and Security. Each Owner and occupant, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Property. Neither the Master Association nor Founder shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants that the Master Association, its officers, Board and committees, and Founder are not insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and loss or damage to property, including Units and the contents of Improvements, resulting from acts of third parties or latent property defects or conditions.

7.2 Access. Each Owner hereby covenants and agrees to provide the Master Association, any applicable Neighborhood Association, EPA, DEQ, the City, and each of their respective employees, agents, and contractors, with the right of access to all real property owned by such person to the extent such access is reasonably required to implement and enforce this Declaration.

7.3 Changes in Circumstances Anticipated. Founder has promulgated a Master Plan for the purposes stated in the recitals of this Declaration; provided, however, that in all cases and events such Master Plan shall be subject to the Master Association's ability to respond to changes in circumstances, conditions, needs and desires within the Property, except as expressly provided for in this Declaration.

7.4 Owner Acknowledgment. Each Owner is subject to this Declaration and the covenants and restrictions contained in this Declaration. By acceptance of a deed, or other instrument establishing title, ownership or other interest, each Owner acknowledges that such Owner has been given notice of this Declaration and that use of a Unit is subject to the provisions of this Declaration.

7.5 Construction Use. It is expressly permissible for Founder and Builders to, consistent with the requirements of the Development Policies, perform construction and such other reasonable activities, and to maintain upon portions of the Property such facilities as deemed reasonably necessary or incidental to the construction and sale of Units in the development of the Property, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities.

7.6 Reasonable Rights to Develop. None of the covenants and restrictions in this Declaration, nor any rule or regulation promulgated by the Board, shall unreasonably impede the right of any owner of the North Parcel or the South Parcel to develop any portion of such Property.

VIII.

MASTER ASSOCIATION INSURANCE

8.1 Insurance Coverage. The Master Association may, at its discretion, obtain and maintain in effect any insurance coverage it deems necessary to effectuate the purposes of this Declaration.

8.2 Waiver of Claims Against Master Association. The Master Association and the Owners hereby waive and release all claims against one another, the officers, the Board and Founder, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

8.3 Adjustments by the Master Association. Any property or casualty loss covered by an insurance policy described above shall be adjusted by the Master Association, and the insurance proceeds for that loss shall be payable to the Master Association. The Master Association shall hold any insurance proceeds in trust for the Master Association and the Owners.

8.4 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record

IX.

RESERVED DEVELOPMENT RIGHTS

9.1 Reserved Development Rights. The Founder reserves the following Development Rights with respect to any and all property within the Project that Founder owns or controls at the time of their exercise, provided that these rights are discretionary with Founder and nothing in this Section shall be construed to impose any affirmative obligation upon Founder:

- (a) The right to add Units and designate uses;
- (b) The right to subject portions of the Property owned by the Founder to additional covenants, conditions, terms and restrictions, as Founder may determine;
- (c) The right to relocate boundaries between adjoining Units, enlarge Units, enlarge or reduce or diminish the size of Units, subdivide Units, or complete or make improvements on Units, to the extent such Units are owned by Founder and/or with the consent of the Owner;
- (d) The right to designate portions of the Property (owned by the Founder, or with the consent of the Owner), as being subject to the Affordable Housing Plan and further to record Affordable Housing Restrictions against such property;
- (e) The right to amend the Declaration, maps or plats in connection with the exercise of any Development Right;
- (f) The right to make amendments to the Declaration, Bylaws or Articles of Incorporation to meet or comply with any requirement of FHA or VA or other applicable law;
- (g) The right to amend the Governing Documents, as provided therein;
- (h) The right, for itself and for the Builders, to maintain signs, sales offices, mobile offices, temporary buildings, parking lots, management offices and models in Units of the Founder or of a Builder;
- (i) The right, for itself and for the Builders, to maintain signs and advertising on the Property to advertise the Property or other communities developed or managed by, or affiliated with the Founder;
- (j) The right to establish, from time to time, by dedication or otherwise, public streets and utility and other easements for purposes including but not limited to public access, access, paths, walkways, drainage, recreation areas, parking areas, conduit installation areas, and to create other reservations, exceptions and exclusions;
- (k) Founder expressly reserves the right to itself, and to Builders, to perform warranty work, repairs and construction work and to store materials in secure areas, in Units and the future right to control such work and repairs, and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a security

interest. Founder expressly reserves such easement through the Property as may be reasonably necessary for exercising reserved rights in this Declaration;

(l) The right to exercise any additional reserved right created by any other provision of this Declaration;

(m) Any rights created or reserved under this Article for the benefit of Founder, for the express benefits of a Builder, may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the appropriate county. Such instruments shall be executed by the transferor and the transferee. The rights transferred may then be exercised without the consent of the Master Association, any Owners or any holders of a security interest;

(n) The consent of Owners or holders of security interests shall not be required for exercise of any Development Rights, and Founder or its assignees may proceed without limitation at its sole option. Founder or its assignees may exercise any Development Rights on all or any portion of the Property in whatever order determined.

(o) The recording of amendments to the Declaration and the map or plat pursuant to Development Rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property as expanded and to any additional Improvements, and the same shall be added to and become a part of the Property for all purposes. Reference to the Declaration plat or map in any instrument shall be deemed to include all amendments to the Declaration, plat or map without specific reference thereto;

(p) The rights reserved to Founder, for itself and for Builders, their successors and assigned, shall not expire unless terminated by written instrument executed by the Founder and recorded in the real property records of the appropriate county; and

(q) Additions of Units to the Property may be made by persons other than the Founder, or its successors and assignees or Owners, upon approval of the Master Association pursuant to a majority vote of the Board. Such approval shall be evidenced by a certified copy of such resolution of approval and a supplement or amendment to this Declaration, recorded in the real property records of the appropriate county.

9.2 Designating Property as Subject to the Affordable Housing Plan.

(a) Without limiting any other rights provided herein, Founder specifically reserves the right to subject portions of the Project to Affordable Housing Restrictions by (i) recording, or causing to be recorded, such restrictions against such property prior to the conveyance of the property to an Owner or Builder, or (ii) requiring such restrictions as a prerequisite to approval of any Small Scale Master Plan.

(b) To the extent provided by any applicable Small Scale Master Plan, each Builder shall cause to be prepared and recorded, temporary and permanent Affordable Housing Restrictions against a Unit prior to the transfer of that property, or any portion thereof or any

Unit thereon, to an Owner. In the event the Builder fails to do so, the Master Association shall have the right to cause to be prepared and recorded such temporary and permanent Affordable Housing Restrictions against such Unit.

(c) A Builder or Owner may modify the Affordable Housing Restrictions on property owned by such Builder or Owner with the written consent of the Midvale City Redevelopment Agency and the Master Association, provided that the consent of the Master Association shall be granted if such modification does not increase the necessity for, increase the burden of, or have an adverse impact on, existing or future Affordable Housing Restrictions affecting other property within the Project.

(d) Upon written assurance of the Midvale City Redevelopment Agency acceptable to the Master Association that modification of Affordable Housing Restrictions on the North Parcel shall not increase the necessity for, increase the burden of, or have an adverse impact on, existing or future Affordable Housing Restrictions applicable to the South Parcel, the provisions of this Section 9.2 shall not apply to the North Parcel.

X.

COMPLIANCE AND ENFORCEMENT

10.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Development Policies, and each Owner shall have the right to enforce applicable covenants in this Declaration.

(b) The Master Association, acting through the Board, may enforce all applicable provisions of this Declaration. Without limiting other remedies available at law, the Master Association may levy Assessments to cover costs incurred by the Master Association to bring a Unit into compliance with the Development Policies.

(c) In addition, the Master Association, acting through the Board, may take the following enforcement procedures to ensure compliance with the Development Policies:

- (i) exercising self-help in any emergency situation; or
- (ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(d) In addition to any other enforcement rights, if an Owner fails to comply with the Institutional Control Process Plans or the Development Policies, the Master Association may record a notice of violation and assess all costs incurred by the Master Association against the Unit and the Owner as an Assessment. The Master Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action, as the Board may establish from time to time.

(e) All remedies set forth in the Development Policies, the Governing Documents, or this Declaration shall be cumulative of any remedies available at law or in equity.

In any action to enforce the Development Policies, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(f) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) The Master Association's position is not strong enough to justify taking any or further action;
- (ii) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Master Association's resources; or
- (iv) That it is not in the Master Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver or estoppel of the Master Association's right to enforce such provisions at a later time under other circumstances or preclude the Master Association from enforcing any other covenant, restriction or rule.

10.2 Joint Right to Enforce Junior or Subordinate Covenants.

(a) The Master Association shall have the right to enforce, by any proceeding at law or in equity, any and all subordinate or junior restrictions, incidents, covenants, reservations, rules, regulations or architectural guidelines now or hereafter imposed by any Neighborhood Association on all or any portion of a Unit in this Community (including covenants for the payment of Assessments established in such subordinate or junior declaration if expressly permitted or delegated), to the extent necessary to implement and enforce the requirements of the Development Policies. Further, the Master Association shall be entitled to enjoin any violation thereof, to cause any such violation to be remedied, or to recover damages resulting from such violation. In addition, violation of any such condition, covenant, restriction, reservation, rule, regulation or guideline shall give to the Master Association the right to enter upon the portion of the Unit wherein said violation or breach exists and to summarily abate and remove, at the expense of the violator, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the applicable provisions of such subordinate or junior governing documents. No such entry by the Master Association or its agent shall be deemed a trespass, and the Master Association and its agents shall not be subject to liability for such reentry or any action taken to remedy or remove such a violation. The cost of any abatement, remedy or removal thereunder shall be a binding personal obligation on the violator.

All remedies provided herein or at law or in equity shall be cumulative and are nonexclusive. Failure by the Master Association to enforce any covenant or restriction contained in any subordinate or junior governing documents shall in no event be deemed a waiver or estoppel of the right to do so thereafter.

(b) Notwithstanding the foregoing, the Master Association shall not be entitled to the enforcement rights described in section 10.2(a) as to any portion of the Project that is subject to a Small Scale Master Plan which has been approved by the Master Association under the alternative approval procedure provided in section 5.3 of this Declaration.

10.3 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any person entitled to enforce the provisions of this Declaration.

10.4 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and nonexclusive.

XI.

GENERAL PROVISIONS

11.1 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

11.2 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity; provided that following the Period of Founder Control:

(a) After the expiration of all Development Policies applicable to any of the Property within a Neighborhood Association, such Neighborhood Association may elect to remove the portion of the Property within the Neighborhood Association from this Declaration. The Neighborhood Association shall provide the Board with all documents reasonably required by the Board to certify the termination of the Period of Founder Control and the expiration of all applicable Development Policies, including but not limited to written certification from all applicable governmental agencies; and

(b) After the expiration of all applicable Development Policies, the Board may dissolve the Master Association in accordance with the Bylaws and applicable law, and record a termination of this Declaration.

11.3 Amendment of Declaration by Owners. With the exception of section 5.2 and 6.1, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time with the written consent of the Master Association. Amendment to Section 6.1 of this Declaration abridging or

modifying the obligations of the Master Association, or the rights of the City, to enforce Institutional Control Process Plans shall only be allowed if, in addition to meeting the foregoing requirements, the City consents to any such amendment. Any amendment of this Declaration shall become effective upon the recordation by the Master Association in the real property records of Salt Lake County of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above. Notwithstanding any other provision of the Declaration, neither the Founder nor the Master Association may amend this Declaration to expand the powers of the Founder or Master Association beyond those expressly granted herein (i) with respect to property owned by a Builder without the consent of the Builder and (ii) with respect to property within a Neighborhood Association, without the consent of such Neighborhood Association.

11.4 Required Consent of Founder to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving Development Rights or otherwise for the benefit of the Founder or its assignees, shall not be effective unless Founder, and its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Founder or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate upon the expiration of the Period of Founder Control.

11.5 Validity of Amendments. Any action to challenge the validity of an amendment of this Declaration must be brought within one year after the amendment is recorded in the real property records of Salt Lake County.

11.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes set forth in the recitals of this Declaration.

11.7 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Founder or its agents or employed in connection with any portion of the Property, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

11.8 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

11.9 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

11.10 Recitals; Exhibits. The Recitals and the Exhibits to this Declaration are an integral part of this Declaration and are hereby incorporated by reference.

11.11 Governing Law. This Declaration shall be construed and governed under the laws of the State of Utah.

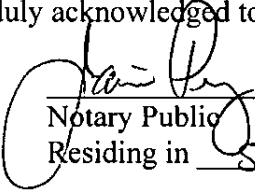
SO DECLARED this 20th day of Nov., 2007 by:

Robert L. Soehnlen

Robert L. Soehnlen, President
Littleton, Inc.

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

On this 20th day of November, 2007, personally appeared before me Robert L. Soehnlen, the signer of the above instrument, who duly acknowledged to me that he executed the same.



Notary Public
Residing in Salt Lake City, Utah

My Commission Expires: 5/18/2011

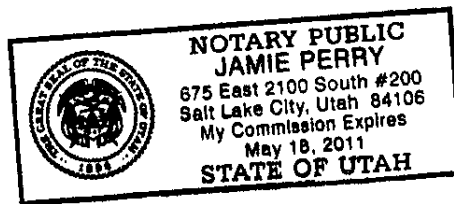


Exhibit A

September 17, 2004

Description of Littleton Property in Midvale City Limits

MIDVALE PARCEL "A", FROM 7800 SOUTH, NORTH TO RAILROAD RIGHT OF WAY

BEGINNING South 0°08'36" West along the Section line 345.595 feet and West 670.489 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 1°43'31" West 1016.338 feet; thence South 89°52'31" West 526.000 feet; thence South 0°07'29" East 983.650 feet to the North right of way line of Utah Highway 48 (7800 South); thence North 89°34'30" West along said North right of way line 45.630 feet; thence South 85°46'23" West along said North right of way line 208.990 feet; thence North 33°13'37" East 67.555 feet; thence North 56°46'23" West 50.000 feet; thence South 33°13'37" West 105.857 feet to the North right of way line of Utah Highway 48 (7800 South); thence South 85°46'23" West along said North right of way line 28.720 feet; thence South 84°41'58" West along said North right of way line 149.070 feet; thence South 81°39'53" West along said North right of way line 50.150 feet; thence South 85°21'15" West along said North right of way line 199.020 feet; thence North 85°48'46" West along said North right of way line 103.290 feet to a point on a 2936.900 foot radius curve to the left, the center of said curve to the left being South 6°28'04" East; thence along the arc of said curve, and said North right of way line through a central angle of 8°43'56", 447.601 feet; thence South 74°48'00" West along said North right of way line 559.220 feet to a point which is said to be on the East bank of the Jordan River; thence North 2°17'00" East along said East bank 175.330 feet; thence North 0°51'00" West along said East bank 218.400 feet; thence North 1°40'00" East along said East bank 75.100 feet; thence North 3°47'00" East along said East bank 150.600 feet; thence North 5°44'00" East along said East bank 142.600 feet; thence North 11°16'00" East along said East bank 74.100 feet; thence North 43°20'00" East along said East bank 285.400 feet; thence North 18°52'00" East along said East bank 78.800 feet; thence North 1°48'00" East along said East bank 77.700 feet; thence North 25°02'00" West along said East bank 52.200 feet; thence North 20°02'00" West along said East bank 99.000 feet; thence North 0°50'00" East along said East bank 338.800 feet; thence North 5°12'00" East along said East bank 160.100 feet; thence North 5°34'00" West along said East bank 88.000 feet; thence North 27°04'23" West along said East bank 52.017 feet to the South right of way line of the Union

Pacific Railroad (formerly Denver & Rio Grande Western Railroad) and a point on a 1382.400 foot radius curve to the right, the center of said curve being South 55°09'56" East; thence departing from said East bank of the Jordan River Northeasterly along the arc of said curve to the right, and said South right of way line through a central angle of 49°00'56", 1182.620 feet; thence North 83°51'00" East along said South right of way line 696.511 feet; thence South 7°50'31" West 257.241 feet; thence South 80°29'54" East 369.390 feet; thence South 11°11'23" East 11.600 feet; thence South 84°51'35" East 168.820 feet to the point of BEGINNING. Contains 99.89 acres.

EXCEPTING FROM SAID PARCEL "A" any portion lying below the mean high water mark of the Jordan River.

MIDVALE PARCEL "B", 7200 SOUTH, SOUTH TO RAILROAD RIGHT OF WAY BEGINNING on the West right of way line of 700 West Street at a point which is North 0°17'31" East along the Section line 174.467 feet and North 89°42'29" West 53.00 feet from the East quarter corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 86°33'00" West along the Northerly right of way line of the Union Pacific Railroad (formerly Denver & Rio Grande Western Railroad) 311.026 feet to a point of a 2889.79 foot radius tangent curve to the left; thence Southwesterly along the arc of said curve, and said Northerly right of way line 136.18 feet; and through a central angle of 2°42'00"; thence South 83°51'00" West along said Northerly right of way line 188.153 feet; thence North 6°09'00" West along said Northerly right of way line 25.000 feet; thence South 83°51'00" West along said Northerly right of way line 1193.047 feet; to a point of a 1482.400 foot radius tangent curve to the left; thence Southwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 47°16'49", 1223.27 feet to a point which is said to be on the East bank of the Jordan River; thence South 83°00'00" West along said East bank 40.061 feet; thence North 25°19'00" West along said East bank 38.600 feet; thence North 16°07'00" East along said East bank 62.200 feet; thence North 30°53'00" East along said East bank 101.900 feet; thence North 27°10'00" East along said East bank 175.600 feet; thence North 18°42'00" East along said East bank 35.600 feet; thence North 23°22'00" East along said East bank 96.200 feet; thence North 5°23'00" East along said East bank 96.600 feet; thence North 6°25'00" East along said East bank 234.300 feet; thence North 13°20'00" West along said East bank 131.180 feet; thence North 2°00'00" West along said East bank 14.870 feet; thence departing from the said East bank of the Jordan River, and running thence North 25°00'00" East 132.00 feet; thence North 44°00'00" East 99.000 feet; thence North 37°00'00" West 132.00 feet; thence North 29°00'00" West 131.070 feet to a point which is said to be on the East bank of the Jordan River; thence North 5°54'00" West along said East bank 151.080 feet; thence North 2°42'00" West along said East bank 215.900 feet; thence North 4°40'00" West along said East bank 258.300 feet; thence North 2°28'00" West along said East bank 267.000 feet; thence North 4°31'00" West

along said East bank 129.500 feet; thence North 4°23'00" West along said East bank 3.63 feet; thence North 5°36'01" West along said East bank 211.677 feet; thence North 0°01'31" West along said East bank 40.00 feet; thence North 4°03'48" West along said East bank 362.429 feet to the Southerly right of way line of said 7200 South Street (Jordan River Boulevard) ; thence departing said East bank of the Jordan River, and running thence North 89°20'39" East along said Southerly right of way line 275.460 feet to a point of a 1369.900 foot radius tangent curve to the right; thence Southeasterly along the arc of said curve and said Southerly right of way line, through a central angle of 27°43'14", 662.775 feet; thence South 16°21'22" East along said Southerly right of way line 34.700 feet; thence South 60°18'00" East along said Southerly right of way line 76.00 feet; thence North 75°45'23" East along said Southerly right of way line 34.700 feet to a point on a 1369.900 foot radius curve to the right, the center of said curve being South 32°20'07" West; thence Southeasterly along the arc of said curve to the right, and said Southerly right of way line 369.940 feet; thence South 42°11'31" East 215.550 feet to a point of a 1335.740 foot radius tangent curve to the left; thence Southeasterly along the arc of said curve and said Southerly right of way line through a central angle of 12°03'18", 281.038 feet; thence South 10°51'59" East along said Southerly right of way line 36.020 feet; thence South 56°56'59" East along said Southerly right of way line 75.99 feet; thence North 76°58'02" East along said Southerly right of way line 36.010 feet to a point on a 1335.740 foot radius curve to the left, the center of said curve being North 30°20'51" East; thence Southeasterly along the arc of said curve and said Southerly right of way line through a central angle of 30°11'59", 704.050 feet; thence South 89°51'08" East along said Southerly right of way line 383.770 feet; thence South 44°46'48" East along said Southerly right of way line 35.310 feet to the West right of way line of 700 West Street; thence South 0°17'31" West along said West right of way line 1158.073 feet to the point of BEGINNING. Contains 115.28 acres.

EXCEPTING FROM SAID PARCEL "B" any portion lying below the mean high water mark of the Jordan River.

MIDVALE PARCEL "C", FROM 7200 SOUTH, NORTH TO MURRAY CITY LIMITS

BEGINNING on the West right of way line of 700 West Street and the city limit line dividing Midvale and Murray Cities said point being South 0°18'00" West 1312.73 feet along the Section line, and North 89°42'00" West 33.00 feet from the East Quarter Corner of Section 23, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 0°18'00" West along said West right of way line 1311.77 feet; thence South 0°17'31" West along said West right of way line 312.210 feet; thence North 89°42'29" West along said West right of way line 20.00 feet; thence South 0°17'31" West along said West right of way line 821.401 feet to the Northerly right of way line of 7200 South Street (also known as "Jordan River Boulevard" per some instruments of record) ; thence South 45°13'12" West along said Northerly right of way line 35.400 feet; thence

North 89°51'08" West along said Northerly right of way line 384.090 feet to a point of a 1210.740 foot radius tangent curve to the right; thence Northwesterly along the arc of said curve and said Northerly right of way line through a central angle of 29°55'15", 632.27 feet; thence North 13°08'41" West along said Northerly right of way line 34.610 feet; thence North 56°56'59" West along said Northerly right of way line 76.000 feet; thence South 79°14'43" West along said Northerly right of way line 34.610 feet to a point on a 1210.740 foot radius curve to the right, the center of said curve being North 36°01'56" East; thence Northwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 11°46'33", 248.840 feet; thence North 42°11'31" West along said Northerly right of way line 215.55 feet to a point of a 1494.900 foot radius tangent curve to the left; thence Northwesterly along the arc of said curve, and said Northerly right of way line, through a central angle of 15°41'35", 409.449 feet; thence North 14°19'55" West along said Northerly right of way line 35.950 feet; thence North 60°18'00" West along said Northerly right of way line 76.00 feet; thence South 73°43'56" West along said Northerly right of way line 35.950 feet to a point on a 1494.900 foot radius curve to the left, the center of said curve being South 27°17'07" West; thence Northwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 27°56'28", 729.010 feet; thence South 89°20'39" West along said Northerly right of way line 301.060 feet to a point said to be on the East bank of the Jordan River; thence North 1°52'25" West along said East bank 304.559 feet; thence North 6°04'00" West along said East bank 75.870 feet; thence North 4°21'00" East along said East bank 76.800 feet; thence North 10°40'00" West along said East bank 83.600 feet; thence North 1°51'00" East along said East bank 102.100 feet; thence North 11°55'00" West along said East bank 81.600 feet; thence North 1°51'00" East along said East bank 145.000 feet; thence North 16°29'00" West along said East bank 61.100 feet; thence North 3°03'00" West along said East bank 25.700 feet; thence North 14°24'00" West along said East bank 27.800 feet; thence North 5°36'00" West along said East bank 108.700 feet; thence North 4°26'00" West along said East bank 128.00 feet; thence North 69°25'00" East along said East bank 16.700 feet; thence North 5°28'00" West along said East bank 22.100 feet; thence North 88°57'00" West along said East bank 13.900 feet; thence North 18°00'00" West along said East bank 28.600 feet; thence North 5°09'00" West along said East bank 130.02 feet to the city limit line dividing Midvale and Murray Cities; thence departing from said East bank of the Jordan River, and running thence North 89°28'44" East along said limit line 3009.85 feet to the point of BEGINNING. Contains 129.70 acres

EXCEPTING FROM SAID PARCEL "C" any portion lying below the mean high water mark of the Jordan River.

(CONTINUED)

FURTHER EXCEPTING FROM PARCEL "C" DESCRIBED HEREIN THE FOLLOWING TWO (2) PARCELS OF LAND:

EXCEPTED PARCEL 1:

BEGINNING at a point located South 0°18'00" West 1312.73 feet along the section line and North 89°42'00" West 33.00 feet and South 89°28'44" West 1534.75 feet from the East Quarter Corner of Section 23, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 0°31'16" East 491.76 feet; thence North 89°43'55" West 62.87 feet; thence Southwesterly 168.65 feet along the arc of a 215.00 foot radius curve to the left (center bears South 0°16'05" West and the long chord bears South 67°47'48" West 164.36 feet with a central angle of 44°56'34"); thence South 45°19'31" West 24.79 feet; thence Southwesterly 157.92 feet along the arc of a 50.00 foot radius curve to the left (center bears South 68°54'12" West and the long chord bears South 68°25'27" West 100.00 feet with a central angle of 180°57'30"); thence Southwesterly 17.64 feet along the arc of a 15.00 foot radius curve to the right (center bears South 67°56'42" West and the long chord bears South 11°38'06" West 16.64 feet with a central angle of 67°22'48"); thence South 45°19'31" West 216.98 feet; thence Southwesterly 74.00 feet along the arc of a 210.00 foot radius curve to the left (center bears South 44°40'29" East and the long chord bears South 35°13'49" West 73.62 feet with a central angle of 20°11'24"); thence North 44°40'29" West 145.89 feet; thence North 89°30'38" West 511.62 feet; thence Southwesterly 322.41 feet along the arc of a 200.00 foot radius curve to the left (center bears South 0°29'22" West and the long chord bears South 44°18'28" West 288.62 feet with a central angle of 92°21'47"); thence South 1°52'25" East 364.68 feet; thence North 89°20'39" East 166.35 feet; thence South 3°30'25" East 60.00 feet; thence North 89°20'39" East 84.05 feet; thence Southeasterly 778.10 feet along the arc of a 1544.90 foot radius curve to the right (center bears South 0°39'21" East and the long chord bears South 76°13'38" East 769.90 feet with a central angle of 28°51'27"); thence South 29°41'07" West 27.43 feet to the North line of Jordan River Boulevard; thence South 73°43'56" West 32.50 feet along the North line of Jordan River Boulevard; thence Northwesterly 729.01 feet along the arc of a 1494.90 foot radius curve to the left (center bears South 27°17'07" West and the long chord bears North 76°41'07" West 721.81 feet with a central angle of 27°56'28"), said curve following along the North line of Jordan River Boulevard; thence South 89°20'39" West 301.06 feet along the North line of Jordan River Boulevard to the East bank of the Jordan River; thence North 1°52'25" West 304.56 feet along the East bank of the Jordan River; thence North 6°04'00" West 75.87 feet along the East bank of the Jordan River; thence North 4°21'00" East 76.80 feet along the East bank of the Jordan River; thence North 10°40'00" West 83.60 feet along the East bank of the Jordan River; thence North 1°51'00" East 102.10 feet along the East bank of the Jordan River; thence North 11°55'00" West 81.60 feet along the East bank of the Jordan River; thence North 1°51'00" East 145.00 feet along the East bank of the Jordan River; thence North 16°29'00" West 61.10 feet along the East bank of the Jordan River; thence North 3°03'00" West 25.70 feet along the East bank of the Jordan River; thence North 14°24'00" West 27.80 feet along the East bank of the Jordan River; thence North 5°36'00" West 108.70 feet along the East bank of the Jordan River; thence North 4°26'00" West 128.00 feet along the East bank of the Jordan River; thence North 69°25'00" East 16.70 feet along the East bank of the Jordan River; thence North 5°28'00" West 22.10 feet along the East bank of the

Jordan River; thence North 88°57'00" West 13.90 feet along the East bank of the Jordan River; thence North 18°00'00" West 28.60 feet along the East bank of the Jordan River; thence North 5°09'00" West 130.02 feet along the East bank of the Jordan River; thence North 89°28'44" East 1475.12 feet to the point of BEGINNING.

EXCEPTED PARCEL 2:

BEGINNING at a point located South 0°17'31" West 282.10 feet along the section line and West 1813.22 feet from the Southeast Corner of Section 23, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence Southeasterly 448.65 feet along the arc of a 1544.90 foot radius curve to the right (center bears South 31°10'08" West and the long chord bears South 50°30'42" East 447.08 feet with a central angle of 16°38'21"); thence South 42°11'31" East 215.55 feet; thence Southeasterly 260.97 feet along the arc of a 1160.74 foot radius curve to the left (center bears North 47°48'29" East and the long chord bears South 48°37'58" East 260.42 feet with a central angle of 12°52'55"); thence South 33°04'16" West 25.03 feet; thence South 79°14'43" West 34.61 feet; thence Northwesterly 248.84 feet along the arc of a 1210.74 foot radius curve to the right (center bears North 36°01'56" East and the long chord bears North 48°04'48" West 248.40 feet with a central angle of 11°46'33"), said curve following along the North line of Jordan River Boulevard; thence North 42°11'31" West 215.55 feet along the North line of Jordan River Boulevard; thence Northwesterly 409.45 feet along the arc of a 1494.90 foot radius curve to the left (center bears South 47°48'29" West and the long chord bears North 50°02'19" West 408.17 feet with a central angle of 15°41'35"), said curve following along the North line of Jordan River Boulevard; thence North 14°19'55" West 33.64 feet along the North line of Jordan River Boulevard; thence North 29°41'07" East 26.63 feet to the point of BEGINNING.

+++

Exhibit B

Institutional Control Process Plans

Exhibit B-1

INSTITUTIONAL CONTROL PROCESS PLAN

Operable Unit No. 1
Midvale Slag Site
Midvale, Utah

I. INTRODUCTION

This Institutional Control Process Plan ("Plan") has been prepared to document the requirements and procedures for the public institutional controls for the Operable Unit No. 1 ("OU1") portion of the Midvale Slag Site (the "Site"). This Plan does not supercede any federal, state, or local statutes, regulations, or ordinances pertaining to the environment and current and future holders of interests of property within the Site will remain obligated to comply with the same. The primary purpose of the controls described in this Plan is to prevent unacceptable human and environmental exposure to contaminants that may be present on the surface or subsurface within OU1. Institutional controls relating to (i) water management over an arsenic plume area located within a portion of OU1; and (ii) organic vapor mitigation controls over another plume area within a portion of OU1 are both addressed in the OU2 Institutional Control Plan. Public controls may be imposed, for example, through building permits, subdivision regulations, excavation permits, or zoning ordinances. Private controls are typically imposed through covenants, deed restrictions on the land, or contractual agreements between property owner or lessee. This Plan is not intended to impose or require private controls, except pertaining to certain aspects of residential uses, as described below. All construction and development activities must be performed in accordance with this Plan.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout OU1. These objectives and those detailed below will be achieved primarily through the implementation of institutional controls defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to property they own or control.

Implementation of this Plan will be through the City of Midvale's development review, excavation permit, and construction specifications processes. Midvale City will add the criteria referenced in this Plan to each of the governing ordinances for the process in question. Staff will review the application in question to verify that it meets the provisions of City Ordinance, including the requirements set forth in this Plan and added to the Midvale City Code. In addition to adding the requirements of this Plan to Midvale Ordinances, an information packet will be developed for potential land and business owners. The information provided will include a history of the site, the remedy

implemented and any restrictions on or additional requirements of the land owner related to a location on a former Superfund site.

The specific objectives of this Plan are as follows:

- To describe the process through which binding and enforceable public ICs will be developed and implemented that will facilitate future construction activities on the Site while at the same time maintaining the short-term and long-term effectiveness of the remedy established in the OU1 ROD.
- To establish controls on the handling and disposal of OU1 soils and wastes, as necessary, during and after Site development.
- To establish controls on groundwater use.
- To establish the requirements through which residential uses will be allowed.
- To provide for the long-term operation and maintenance of development-oriented covers and barriers, as applicable, that may be installed as part of residential development.
- To identify the specific mechanisms (such as City ordinance(s), building permit and inspection requirements, deed restrictions, etc.) that will be used to establish and enforce the institutional controls established in this Plan.
- To identify the roles and responsibilities that private parties and federal, state, local, and municipal entities will perform and undertake in order to implement this Plan, including oversight and enforcement.

Remedial actions on the OU1 portion of the Site were initiated in 1996 and construction completion was achieved in 1998. The statutory five-year review was initiated in 2003, but focused on OU1, since the OU2 ROD has yet to be implemented. EPA recently issued a final Five-Year Review Report. The primary purpose of the Report was to determine whether the remedy at the Site is protective of human health and the environment. The Five Year Review Report indicated that the OU1 ROD (i) may have to be modified to require, among other things, additional work within the Jordan River riparian area within OU1; and (ii) may have to be clarified to permit residential uses in the area within the limits of Midvale City. In response to the Five-Year Review Report, EPA may issue an Explanation of Significant Differences or other form of modification to the OU1 ROD ("ESD"). It is anticipated that through the ESD and the related administrative record (e.g., technical memoranda and related documents), specific standards and procedures will be identified through which unrestricted residential use may be achieved within OU1. For purposes of this Plan, these

standards and procedures are referred to generally as the "Unrestricted Use Protocol". In areas where the requirements of the Unrestricted Use Protocol, if adopted through the ESD process, have not been implemented, residential use may still be achieved by implementing the institutional controls set forth in Section III of this Plan.

II. GROUNDWATER MONITORING WELL MANAGEMENT

The shallow aquifer beneath a portion of OU1 is contaminated, primarily with arsenic and perchloroethylene (PCE). The sources for arsenic originate on OU2 and the source for PCE originates east of OU2 and certain specific institutional controls relating to these plumes are addressed in the OU2 IC Plan.

In addition to the institutional controls identified in the OU2 IC Plan, in order to monitor these contamination plumes, a number of groundwater monitoring wells are located within OU1. In the future, these wells may be replaced and new wells constructed.

The objectives of the institutional controls relating to water management are as follows:

- To minimize human exposure to contaminated groundwater.
- To protect existing and future groundwater monitoring wells.

A. Description of Specific Institutional Controls:

1. Prohibit all new water wells on OU1, (except for groundwater monitoring wells, Murray City Municipal Well, and the well owned by Littleton, Inc.).
2. Prohibit the disturbance of existing groundwater monitoring wells without the prior approval of EPA and UDEQ. A rehabilitation or well replacement plan must accompany any request to disturb a monitoring well.

B. Mechanism of Implementation:

1. Sections 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section II. A. 1 and 2 of this Plan.

III. MATERIALS MANAGEMENT

With respect to the Midvale portion of OU1, the OU1 ROD includes a prohibition on residential use without additional property remediation to residential soil cleanup levels (a contingency addressed pursuant to this Plan)

and the requirement that waste soils, if any, transported off-Site would be disposed in a RCRA Subtitle D facility.

Soil management requirements for commercial or industrial development are limited to requiring that if any waste soils generated in the Midvale City portion of OU1 are to be disposed of off-Site, they will be taken to a RCRA Subtitle D facility. The requirements of the receiving facility must also be satisfied. No soils management requirements exist for the Murray City portion of OU1. Limited quantities of slag are also present in certain areas of OU1. This Plan requires that all visible slag encountered during construction activities on OU1 be managed in accordance with this Plan, as described below.

The objective of the institutional control relating to soils management is to ensure that in areas where residential uses will occur, soils that may have contaminant concentrations above residential clean-up goals are appropriately managed. The objective of slag management is to limit exposures to human and ecological receptors.

Specific soil management requirements for residential development of the Midvale City portion of OU1 are discussed in Section III.

A. Description of Specific Institutional Controls:

2. All excess excavated soils, not otherwise relocated within non-residential areas of OU1, that the landowner or developer elects to haul off-Site for disposal, will be disposed of in a RCRA Subtitle D facility, as provided in the OU1 ROD.
3. Slag visible at the surface either prior to or after site grading will be excavated and handled by one of the following methods: (i) placed under roadways constructed in City rights-of-way, in parking lots, or in similar areas; (ii) relocated to OU2 if practicable, in accordance with the requirements of the OU2 Institutional Control Process Plan; (iii) covered with a minimum of 2-feet of clean soil; or (iv) disposed in a RCRA Subtitle D landfill.
4. Contractors performing earthwork on OU1 will be informed of the presence of contamination and provided access to the administrative record for OU1. Contractors would be required to comply with applicable environmental laws and regulations, including OSHA.

B. Mechanism of implementation:

1. Midvale City Construction Specifications provide for project review, soils testing and disposal requirements for excavations within the Sharon Steel OU2 area. Because contaminants of concern and proposed controls are similar at the Midvale Slag Superfund Site,

Section 12.12.150 of the Midvale City Municipal Code will be amended by Ordinance of the City Council to include Midvale Slag OU1 within the control area currently identified as Sharon Steel OU2. Section 12.12.150 of the Midvale City Municipal Code and Midvale City Construction Specifications will be amended by Ordinance of the City Council to include the controls identified in Section III. A. 1-3 of this Plan.

IV. RESIDENTIAL USE

Unrestricted residential use is permitted within the portion of OU1 located within Murray City. In the area of OU1 located within Midvale City, certain areas of the native surface contain lead and arsenic above the residential clean-up goals adopted in the OU1 ROD. However, the native surface on most of OU1 was modified significantly in the mid-1980s when a large amount of fill was brought onto OU1. Fill soil was placed in a wedge across the eastern $\frac{3}{4}$ of the Midvale City portion of OU1. Fill thickness ranges from 18-feet tapering gradually to the fill limits on the western side of OU1. Placement of additional fill is contemplated under a development plan for OU1. The cleanup standards for residential use within OU1 are as follows: Arsenic (73 parts per million); cadmium (49 parts per million); and lead (650 parts per million).

As explained in the Introduction, it is anticipated that through the ESD process and the associated administrative record (*e.g.*, technical memoranda and related documents), unrestricted residential use may be achieved within the portion of OU1 located in Midvale City through the "Unrestricted Use Protocol." In areas of OU1 within Midvale City where the requirements of the Unrestricted Use Protocol (if adopted through the ESD process), have been implemented, the Institutional Controls identified in this Section III will not apply. In areas of OU1 within Midvale City where the Residential Use Protocol has not been implemented, residential use may still be achieved through compliance with the institutional controls set forth in Section III of this Plan. These institutional controls focus on excavation and grading restrictions. The restrictions differ based on the depth of clean fill placed over potentially contaminated soils.

The objectives of the institutional controls relating to restricted residential use within the portion of OU1 located within Midvale City are as follows:

- To minimize human exposure to contaminants in soils at levels that result in an unacceptable risk to human health (*e.g.*, contaminants that occur at concentrations above the relevant residential cleanup goals).
- To effectively manage excavated material, including wastes, during construction.

- To insure that appropriate final covers are installed, inspected, and maintained during and after development of residential uses, if a two-foot minimum cover method is utilized.

With respect to any and all residential development within OU1, developers will be required to comply with this Plan in connection with any such development, including specifically the materials management requirements described above. These requirements will be enforced generally through the building permit process, by requiring building permit applicants to provide independent compliance certification through a special inspector. The special inspector will certify to Midvale City that the requirements of this Plan have been satisfied in connection with residential uses in areas subject to institutional controls.

The special inspector will also certify whether the depth of clean cover on residential lots subject to institutional controls is in excess of or less than four feet. On residential lots where the depth of cover exceeds four feet, Midvale City's building permit process will function as the enforcement mechanism for excavation and materials management controls after initial home construction. With respect to residential lots where the depth of cover is less than four feet, Midvale City's building permit process will apply but in addition, excavation and grading activities not otherwise requiring a City building permit performed after initial home construction will be managed through Property Owners' Associations ("POAs") and private Covenants, Conditions, and Restrictions ("CC&Rs"). With respect to residential development within OU1 in areas that are subject to institutional controls, Midvale City will require, as part of the planned development review process, that new residential developments provide CC & Rs governing maintenance of common areas, private roads, and other amenities. CC&Rs are implemented and enforced through POAs. As an added requirement to residential developments within the OU1 boundaries that are subject to institutional controls, the City will require that CC&Rs will include information concerning the property's status as a former Superfund site and that the POA follow, implement, and enforce the specific institutional controls described below.

A. Description of Specific Institutional Controls:

1. New Residential Developments

(a) As part of the City's Small Area Master Plan process, residential developments which are required to comply with this Plan will be required to submit the following information:

- (i) Grading plans which indicate the depth of clean fill on residential and recreational lots. At the time that the Conditional Use Permit ("CUP") for the Small Scale Master Plan is granted, the City will identify the depth of clean fill for the

specific development ("CUP Approved Depth"). The CUP Approved Depth will be a uniform depth of fill number equal to the most shallow fill area located within the relevant development area.

- (ii) Conditions, Covenants and Restrictions to be filed with the Subdivision Plat which include the creation of a Property Owners Association and non-building permit excavation and grading restrictions as identified below

2. Activities Subject to Building Permit

- (a) Special Inspector. All building permit applicants for construction work within residential areas will be required to retain, at their sole cost, a special inspector with appropriate experience and knowledge to oversee the implementation of this Plan. The special inspector will certify to the City that the institutional controls set forth in this Plan (as then applicable to such property and activity) have been followed in connection with such construction activities.
- (b) Excavation and Materials Management. For all activities after initial home construction that require a building permit and involve excavations below the CUP Approved Depth, a materials management plan and a special inspector will be required as part of the Midvale City Building Permit and Inspection process. The Special Inspector will oversee implementation of the materials management plan. Prior to issuance of a Certificate of Occupancy by the Midvale City Building Official, the Special Inspector will submit a certification that final depth of clean fill meets or exceeds the CUP Approved Depth.
- (c) All materials from excavations deeper than the CUP Approved Depth ("Restricted Materials") will be segregated to prevent mixing with the clean barrier soils; except that any excavated materials that the special inspector certifies do not contain contaminants at levels above residential cleanup levels applicable to OU1 will not be considered "Restricted Materials."
- (d) All Restricted Materials will be (i) placed back in the excavation (where feasible) at or below the applicable depth, compacted as appropriate, and the clean cover replaced at an elevation not less than the original CUP Approved Depth;

(ii) relocated to areas within OU1 intended for uses other than residential; or (iii) disposed of in a RCRA Subtitle D landfill.

3. Activities Not Subject to Building Permits

(a) In residential areas subject to institutional controls where the CUP Approved Depth is equal to or greater than four feet, no additional institutional controls will apply with respect to activities not otherwise subject to building permits. In residential areas subject to institutional controls where the CUP Approved Depth is less than four feet, the following institutional controls will apply to certain activities that do not otherwise require a building permit:

- (i) All property owners must submit a landscape and, if applicable, grading plan to the POA prior to beginning any landscaping or grading activities. The POA shall ensure that the CUP Approved Depth is maintained and preserved through the landscaping process.
- (ii) All grading activities which result in a final area with less than the CUP Approved Depth are prohibited. Importation of clean fill will be required to achieve desired landscaping elevations.

B. Mechanism of Implementation:

- 1. Section 17-7-9 of the Midvale City Zoning Ordinance, and Title 16, Subdivisions, will be amended by Ordinance of the City Council to include the provisions of Section III of this Plan.

V. OVERSIGHT AND ENFORCEMENT ROLES AND RESPONSIBILITIES; AMENDMENT OF PLAN

Midvale City (the City) Department of Community and Economic Development will be the primary enforcement and oversight agency. Compliance with the ICs is the responsibility of the landowner, contractors and subcontractors working within OU1.

This Plan and the rules, regulations, ordinances, and covenants adopted hereunder may be revised from time to time as may be necessary or desirable to clarify its provisions or to incorporate new or modified requirements, as follows. The affected landowner(s), Midvale City, DEQ, or EPA may propose changes to this Plan. All proposed changes will be reviewed by the affected landowner(s), Midvale City, DEQ, and EPA prior to adoption by the Midvale City Council.

Copies of revised documents will be delivered to all entities with oversight and enforcement roles and responsibilities listed below.

A. Midvale City Responsibilities:

- Develop and process required ordinance changes to implement provision of this Plan.
- Undertake appropriate enforcement action to include repair of covers and barriers, if the landowner is unresponsive. City will enforce repair and collection of costs through Title 7 – Administrative Code Enforcement Program of the Midvale City Municipal Code.
- Review of site plan applications and issuance of final site plan approval.
- Review of road cut permit applications and issuance of permits.
- Initial site development and post-development inspections to ensure compliance with construction permit will include assessment of compliance with this plan.
- Verify compliance with requirements to allow single family residential uses in accordance with this plan will occur as part of the City's standard conditional use permit process.
- Verify that private covenants and deed restrictions are in place and contain applicable ICs for single family residential developments, including the requirements of this Plan relating to homeowners association (or similar entity) responsibilities concerning landscaping, irrigation and excavation.

B. EPA and UDEQ Responsibilities:

- Perform monitoring of groundwater quality to assess performance of remedial action as required by the OU1 and OU2 RODs.
- Perform oversight of unrestricted residential use option under the Unrestricted Use Protocol, if adopted through the ESD process.

C. Landowner / POA Responsibilities:

- Relocating excess soils within OU1 in a manner consistent with the OU1 ROD and this Plan.
- Compliance with disposal facility requirements for off-Site soil disposal.
- Compliance with OU2 IC Plan (as applicable).

- Establish private covenants and deed restrictions requiring that future land owners comply with applicable requirements set forth in this Plan (owner/developer).
- Oversight and enforcement of regulated excavation activities and other landscaping and grading controls (POA).

A summary of the oversight and enforcement roles and responsibilities may be prepared to facilitate the implementation of this Plan.

Exhibit B-2

INSTITUTIONAL CONTROL PROCESS PLAN

Operable Unit No. 2
Midvale Slag Site
Midvale, Utah

I. INTRODUCTION

This Institutional Control Process Plan ("Plan") has been prepared to document the requirements and procedures for the public Institutional Controls ("ICs") for the Operable Unit No. 2 ("OU2") portion of the Midvale Slag Site (the "Site") as illustrated in Figure 1. This Plan does not supersede any federal, state, or local statutes, regulations, or ordinances pertaining to the environment and current and future holders of interests of property within the Site will remain obligated to comply with the same. The primary purposes of these controls are (i) to prevent unacceptable human exposure to contaminants that will remain within OU2 after completion of remedial action by ensuring the protection, maintenance, and improvement of physical barriers that have been or will be placed on the Site; and (ii) to prevent or limit activities in certain areas of OU2 that may increase or exacerbate groundwater contamination. Public controls may be imposed, for example, through building permits, subdivision regulations, excavation permits, or zoning ordinances. Private controls are typically imposed through covenants, deed restrictions on the land, or contractual agreements between property owner or lessee. This Plan is not intended to impose or require private controls, except as pertaining to certain aspects of residential uses, as described below. The public controls outlined in this Plan will not apply until after the completion of the initial cover system selected as the remedy for OU2 in the Record of Decision (October 29, 2002) ("OU2 ROD"). All construction and development activities must be performed in accordance with this Plan.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout OU2. These objectives and those detailed below will be achieved primarily through the implementation of institutional controls defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to property they own or control.

Implementation of this Plan will be through the City of Midvale's development review, excavation permit, and construction specifications processes. Midvale City will add the criteria referenced in this Plan to each of the governing ordinances for the process in question. Staff will review the application in question to verify that it meets the provisions of all applicable City Ordinances, including the requirements set forth in this Plan and added to the Midvale City Code. In addition to adding the requirements of this Plan to Midvale

Ordinances, an information packet will be developed for potential land and business owners. The information provided will include an history of the site, the remedy implemented and any restrictions or additional requirements of the land owner related to a location on a former Superfund site.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout OU2. These objectives and those detailed below will be achieved primarily through the implementation of institutional controls defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to property they own or control.

The specific objectives of this Plan are as follows:

- To describe the process through which binding and enforceable public ICs will be developed and implemented that will facilitate future construction activities on the Site while at the same time maintaining the short-term and long-term effectiveness of the remedy established in the OU2 ROD.
- To establish controls relating to the management and disposal of OU2 soils and wastes during and after Site development.
- To establish controls on the replacement of the vegetated soil cover system with other types of development-oriented covers and barriers.
- To provide for the long-term operation and maintenance of development-oriented covers and barriers that are installed in lieu of the vegetated soil cover system.
- To establish water management controls to minimize adverse effects on the groundwater remedy selected in the OU2 ROD. These water management ICs will apply to storm water, irrigation, and wet utilities within certain defined areas of OU2 (and a portion of OU1).
- To establish controls on future construction-related activities (deep excavations, borings, or foundations) to prevent cross-contamination between aquifers within a defined area of OU2.
- To establish controls on groundwater use.
- To establish the requirements through which single family residential uses will be allowed.
- To establish vapor mitigation controls relating to buildings within defined areas of OU2 (and a portion of OU1).

- To identify the specific mechanisms (such as City ordinance(s), building permit and inspection requirements, etc.) that will be used to establish and enforce the institutional controls established in this Plan.
- To identify the roles and responsibilities that private parties and federal, state, local, and municipal entities will perform and undertake in order to implement this Plan, including oversight and enforcement.

II. COVERS AND MATERIALS MANAGEMENT

To reduce the risk of exposure to contaminants present at OU2, a vegetated soil cover system designed to achieve positive surface water drainage will be constructed over existing smelter wastes, native soils, and slag located on OU2. Operation and maintenance activities associated with this soil cover system will be provided for in a separate Operation and Maintenance Plan. If and when redevelopment occurs within the boundaries of OU2, it is anticipated that in certain redeveloped areas, the cover system will be replaced with other forms of development-oriented covers, such as structures (*i.e.*, building footprints), hardscape (*i.e.*, sidewalks, parking lots, roads, etc.), and vegetated landscaped areas. This Plan establishes the process through which the final vegetated soil cover system will be replaced and modified as necessary for redevelopment and describes how long-term operation and maintenance will be accomplished on redeveloped parcels of land within the Site.

In order to facilitate materials management in relation to any future excavation activities, a demarcation layer, consisting of a minimum of 24-inches of slag or other bright, geotextile fabric, will be installed beneath all barriers and covers. This demarcation layer marks the interface between the barriers and covers and materials that is potentially impacted from historic smelter operations. In any future excavation operations, excavated materials must be managed appropriately and any disturbed demarcation materials must be replaced at the appropriate level to ensure that all potentially impacted materials remain beneath a permanent demarcation layer.

The objectives of the institutional controls relating to cover systems and solid media left at the site are as follows:

- To minimize human exposure during and after construction to wastes remaining in place.
- To effectively manage excavated material, including wastes, during construction.
- To ensure that appropriate final covers are installed, inspected and maintained during and after Site development (except that the vegetated soil cover is not required to be installed within the Union Pacific or UTA Property).

- To prevent cross-contamination from the shallow perched aquifer to the upper sand and gravel and deep principal aquifers through future construction or investigation activities (such as deep excavations, borings, or foundations) within the Source Area defined on Exhibit A.
- To prevent cross-contamination from the upper sand and gravel aquifer to the deep principal aquifer within the Plume Area defined on Exhibit A.

A. Description of Specific Institutional Controls:

1. Cover Maintenance. The individual landowners will be responsible for maintenance and repair of covers and barriers upon their property. The City shall have the right to make necessary repairs to covers and barriers if the landowner fails to do so in a timely or appropriate manner. In that event, the City shall have the right to recover its costs from the landowner. The City shall also have the right, in its sole discretion, to charge the landowner a surcharge for the costs of the City's work related to the property, in an amount established by ordinance. This requirement does not apply to the Union Pacific or UTA Property.
2. Storage of Excavated Materials. Materials excavated from beneath final covers or other barriers must be segregated from clean cover and barrier materials. Slag materials must also be segregated from materials underlying the slag. Materials excavated from below the demarcation layer may be stored on plastic and covered with plastic or cloth tarp for a single 8-hour work shift. Storage for up to 24 hours adjacent to the work area is permitted if the storage area is secured by temporary fencing. Storage beyond 24 hours must be in roll off bins with secured tops or equivalent. Storage of slag materials must limit or prevent human and environmental exposure (e.g. limited access, dust suppression, etc.). Storage and management of excavated materials must be described in reasonable detail and performed in accordance with the Materials Management Plan discussed below.
3. Replacement of Excavated Materials. Reasonable efforts should be used to return excavated materials to the original excavation. If excavated materials are returned to the excavation, any materials beneath the demarcation layer must be placed first, with the demarcation layer being replaced to the excavation and compacted as appropriate, followed by restoration of an appropriate final barrier or cover. To the extent practicable, any new demarcation layers must tie into existing demarcation layers prior to the placement of covers or barriers. If the demarcation layer consists of slag, the minimum thickness must be 24-inches; otherwise a

brightly-colored geotextile fabric must be used. Worn or damaged geotextile demarcation material in an excavated area must be replaced with new material. Any left over waste material must be managed in accordance with this Plan.

4. Relocation of Excavated Materials. Reasonable efforts should be used to appropriately re-distribute excess excavation materials within the impacted property, in accordance with the requirements of this Plan. However, except for calcine wastes (described below), excess excavation materials may also be relocated to any area within OU2. In connection with any material relocation activities, a demarcation layer consisting of a minimum 24-inch layer of slag or other appropriate demarcation material shall be placed on top of any potentially impacted materials, followed by an appropriate cover consistent with the OU2 ROD. Worn or damaged geotextile demarcation material must be replaced with new material. Any new demarcation layers shall tie into existing demarcation layers prior to placement of final covers and barriers. Compaction requirements from the City of Midvale must be satisfied. If the final barrier consists of a vegetated soil cover, the minimum depth must be 18-inches (24-inches for residential use) and the area must be re-seeded and vegetation re-established. Relocation of materials to undeveloped areas of OU2 must not result in slopes exceeding the maximum slope established in the Remedial Design for OU2 or otherwise adversely affect storm water management systems.
 - (a) Calcine Material. Calcine waste materials consist of dense, fine-grained, purple-colored material. Calcine wastes will generally be consolidated in areas to the immediate north and west of the Pioneer Cemetery and will be covered with a minimum 24-inch layer of slag or other demarcation material. Calcine waste materials may not be relocated within OU-2 without the approval of EPA and DEQ, except that calcine waste materials may be relocated, subject to the requirements of this Plan, within the original Calcine Waste Area designated in the OU2 ROD and the Remedial Design without further approval.
5. Off-Site Disposal. Any soils or smelter waste that must be disposed off-site must be disposed in a permitted landfill. Wastes must be characterized in accordance with the requirements of the permitted disposal facility. Off-site disposal of Waste Material in excess of 10 cubic yards must also comply with Paragraph 13 of the Consent Decree. "Waste Material," as defined under the Consent Decree, includes any hazardous substances, any pollutant or contaminant, or any solid waste.

6. Plans and Approvals. Site plan approval as defined and required by chapter 17-7-3 and regulated by 17-7-9 of the Midvale City Zoning Ordinance shall be obtained before initial site development, future redevelopment or change in land use. Applications shall be made available through the City Community and Economic Development Department. The application shall disclose the presence of hazardous substances on the Site and identify the type and location of reports pertaining to the location and type of hazardous substances on the Site. In conjunction with the submittal of the preliminary site plan application, the applicant shall submit documentation that shall include an attestation that the applicant is aware of the current Site condition and will comply with all Institutional Controls. Applicant submittals and requirements under the site plan approval process are summarized below which are in addition to and in conjunction with the requirements identified in 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance:
- (a) Applicant shall submit a plan illustrating the proposed construction and development. Preliminary and final site plans of development shall be submitted for review and approval. Preliminary and final development plans must designate the type and location of final barriers.
 - (b) A materials management plan must be provided with respect to any construction activities that involve the management of potentially contaminated materials (e.g., slag or underlying materials). The materials management plan must demonstrate that all such construction activities will be in compliance with this Plan.
 - (c) An air quality monitoring and dust suppression plan shall be provided with respect to any construction activities that involve the management of potentially contaminated materials (e.g., slag or underlying materials). The plan will ensure that National Ambient Air Quality Standards are met for site contaminants at the boundary between the construction area and the developed areas in addition to State or local air quality requirements. Applicant may request a waiver of the air monitoring requirements by submitting relevant data demonstrating compliance with all air quality standards under similar circumstances (similar weather conditions, construction operations, site materials).
 - (d) Grading and drainage plans will be required and shall specifically demonstrate the protection of final barriers from erosion and ensure that drainage patterns are appropriate

and consistent with the groundwater remedy adopted by EPA.

- (e) A proposed monitoring and maintenance plan must be provided by applicant to ensure that all barriers on the proposed development site will be maintained in accordance with this Plan.
- (f) A road cut permit shall be required for any work in the public right-of-way that breaches final site covers, per ordinance 12.12.150 of the Midvale City Municipal Code.

- 7. Intrusive Activities. If any intrusive exploratory activities (such as excavations, borings, CPT soundings) or foundations (such as piles or drilled shafts) are proposed for the Source or Plume Areas (as defined on Exhibit A) at depths greater than 20 feet, approval must first be obtained from the City of Midvale. The request for approval must include a detailed description of the proposed exploration or construction activity as well as the mechanism(s) that will be used to prevent cross contamination between the two aquifers. The request must be approved by the City of Midvale prior to implementation of the work. An application process will be established to enforce these restrictions.

B. Mechanism of implementation:

- 1. Sections 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section II.A.1 and 6 of this Plan.
- 2. Section 12.12.150 of the Midvale City Municipal Code, which addresses excavations within the public right of way, will be amended by Ordinance of the City Council to include Midvale Slag OU2 within the control area currently identified as Sharon Steel OU2.
- 3. Midvale City's Construction Specifications will be amended to include the provisions of Section II.A.2-5 and 7 of this Plan.

III. WATER MANAGEMENT

The shallow aquifer beneath a portion of the OU2 and OU1 areas of the Site is contaminated, primarily with arsenic, as well as other substances. Significant arsenic source areas are located in certain areas of OU2. Water management on a portion of OU2 will focus on preventing new sources of water from infiltrating water over and near the Source Areas depicted in Exhibit A. Water management on portions of OU2 and OU1 will also focus on preventing new sources of water from affecting the extent, direction, and flow of the arsenic

plume within the Source and Plume Areas depicted on Exhibit A. The Source and Plume Areas depicted on Exhibit A are merely illustrative.¹ At the time that Subdivision (as defined by the Midvale City Code) occurs on any property within a Source or Plume Area, the boundaries of these areas will be further defined, surveyed, and demarcated on the small scale master plan, subdivision plat, and/or other permanent record maintained by Midvale City for purposes of enforcement. These institutional controls are in part based upon the conclusions reached in a document prepared for EPA entitled: Technical Memorandum Evaluation of Impact of Residential Irrigation on Arsenic Plume, Midvale Slag Superfund Site, Operable Unit 2 (CDM 2004).

The objectives of the institutional controls relating to water management are as follows:

- To minimize human exposure to contaminated groundwater.
- To effectively manage contaminated construction wastewater (pumped groundwater).
- To minimize adverse impacts to the groundwater remedy selected in the OU2 ROD by minimizing potential infiltration of water through Source and Plume Areas.

A. Description of Specific Institutional Controls:

1. Prohibit all water wells on OU2 (excluding groundwater monitoring wells).
2. Prohibit the disturbance of any groundwater monitoring wells without prior approval by EPA and UDEQ. A rehabilitation or well replacement plan must accompany any request to disturb a monitoring well.
3. Prohibit unlined storm water detention basins within the boundaries of or within 100 feet of a Source or Plume Area (Exhibit A). Liners of detention basins must be impervious (detention basins will be shown on construction plans relative to source area boundaries and will be included in site plan applications).

¹A more specific description of the "Source Area" is the point beginning at the north east corner of the intersection of 7800 South and Bingham Junction Boulevard (to be constructed), thence north along the eastern edge of the right-of-way for the Bingham Junction Boulevard to the Union Pacific right-of-way, thence east along the Union Pacific right-of-way to the western edge of the right-of-way for Holden Street, thence south along such right-of-way to the southern edge of the public railroad dock property, thence west to the eastern edge of the right-of-way for Bingham Junction Boulevard; and also including the Calcine Waste Area as defined in the Remedial Design. A more specific description of the "Plume Area" will be developed through the subdivision process.

4. Prohibit the bedding of wet utilities in slag.
5. Require that all wet utilities traversing Source and Plume Areas be bedded in flowable concrete (flowfil). (Wet utility locations will be shown on construction plans relative to source area boundaries and will be included in site plan applications.)
6. Require low-permeability collars for all wet utilities within 100-feet of the Source Area or Plume Area and that traverse a Source Area or Plume Area somewhere along the utility alignment. Collars will be installed at 50-foot intervals. Collar designs will be submitted with the construction permit and site plan application discussed in Section II.
7. Require a mechanism to limit infiltration of irrigation water within Source Areas. Minimum measures for Source Areas may include installing a buried impermeable barrier with drain system beneath irrigated areas (or alternative with equivalent performance); large trees or shrubs may be placed in sealed planter boxes (*the location of irrigated areas and piping will be shown on construction plans relative to source areas and will be included in site plan applications*).
8. For non-residential development within Source Areas, all building permit applicants will be required to submit to the City an irrigation plan in compliance with the provisions of this Plan. The City will have the responsibility of approving and overseeing the implementation of the irrigation plan. For residential development within Source Areas, Property Owners' Associations will have the responsibility of reviewing, approving, and overseeing the implementation of irrigation plans, as described more fully in Section IV, below.
9. Prohibit the use of concrete rubble as fill material below the historic high water table within 100-feet of a Source or Plume Area (except as may be done during remedial action).
10. Require disposal of contaminated construction wastewater in accordance with applicable environmental regulations (*to be included in site plan application*).

B. Mechanism of implementation:

1. Sections 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section III.A. 1, 7, and 8 of this Plan. This provision will also include a requirement that private covenants and deed

restrictions will acknowledge this Plan and require compliance therewith.

2. The Midvale City Standard Construction Specifications will be amended by Ordinance of the City Council to include the provisions of Section III.A.2-6, 9 and 10 of this Plan.
3. All subdivision plats and site plans for development within the Source and Plume areas identified on Exhibit A shall be created and managed in accordance with the Midvale City Zoning Ordinance and enforced through existing laws.

IV. MEASURES TO ALLOW SINGLE FAMILY RESIDENTIAL USES

The OU2 ROD permits residential development in the form of multi-family dwellings. Such development requires the placement of two-feet of clean soils as a final cover. Although the OU2 ROD does not anticipate single-family residential homes, it does not prohibit this type of development. The following controls have been developed to permit single-family residential development on OU2. This Section IV does not apply to the Union Pacific or UTA Property.

With respect to any and all single-family housing that will be constructed on OU2 (including traditional detached units, twin homes, duplexes, triplexes, and townhouses), developers will be required to comply with this Plan in connection with any such development, including specifically the materials management requirements described above. The clean fill barrier portion of the materials must be at least 24 inches for single-family residential use. The City will also impose restrictions on permissible landscaping within OU2, which will be designed to minimize the potential breaching of final barriers and to minimize contact with underlying smelter wastes. These ICs will generally be enforced through the City's building permit process.

Midvale City's building permit process will function as the primary enforcement mechanism for excavation and materials management controls after initial home construction. In addition, excavation and grading activities not otherwise requiring a City building permit performed after initial home construction will be managed through Property Owners' Associations ("POAs") and private Covenants, Conditions, and Restrictions ("CC&Rs"). Midvale City will require, through the planned development review process, that new residential developments within OU2 provide CC & Rs governing maintenance of common areas, private roads, and other amenities. CC&Rs are implemented and enforced through POAs. As an added requirement to residential developments within OU2, the City will require that CC&Rs will include information concerning the property's status as a former Superfund site and the restrictions concerning excavations identified in Section II of this Plan are disclosed to and followed by the POA. All landscape plans as to all residential properties within OU2 shall be reviewed and approved by the POA to ensure that applicable landscaping

limitations are met as well as that covers and barriers are maintained and that excavated materials are managed in accordance with the requirements of Section II of this Plan.

In addition to materials management issues, the presence of chlorinated organic contaminants including perchloroethylene in the Upper Sand & Gravel Aquifer creates the potential for migration of contaminant vapors into future structures. Mitigation measures to address potential vapor intrusion will be required only for buildings within the area designated on Exhibit B, unless risks are demonstrated to be below a level of concern to the satisfaction of Region 8 EPA. Mitigation measures may include vapor barriers or other engineering methods commonly employed to reduce risks from radon. The areas of OU2 (and part of OU1) subject to this requirement are illustrated on Exhibit B.

A. Specific Institutional Controls:

1. New Residential Developments

- (a) As part of the City's Small Area Master Plan process, residential developments which are required to comply with this Plan will be required to submit the following information:
- (b) Grading plans which indicate the depth of clean fill on residential and recreational lots. The OU2 ROD requires a minimum two-foot depth but developers may install additional cover. At the time that the Conditional Use Permit for the Small Scale Master Plan is granted, the City will identify the depth of clean fill for the specific development ("CUP Approved Depth"). The CUP Approved Depth will be a uniform depth of fill number equal to the most shallow fill area located within the relevant development area.
- (c) Conditions, Covenants and Restrictions to be filed with the Subdivision Plat which include the creation of a Property Owners Association and non-building permit excavation and grading restrictions as identified below.
- (d) The City will develop limitations on permissible landscaping within OU2, which will be designed to minimize the potential breaching of final barriers and to minimize contact with underlying smelter wastes.
- (e) Unless risks are demonstrated to be below a level of concern to the satisfaction of Region 8 EPA, for all buildings within the area depicted in Exhibit B, appropriate vapor mitigation measures will be implemented, including vapor barriers or other engineering methods, such as venting systems, commonly employed to reduce risks from radon.

2. Activities Subject to Building Permit

- (a) For all activities after initial home construction that require a building permit which involve excavations exceeding the CUP Approved Depth, a materials management plan will be required as part of the Midvale City Building Permit and Inspection process. The City will oversee implementation of the materials management plan. Prior to issuance of a Certificate of Occupancy by the Midvale City Building Official, the owner or developer will submit a certification that final depth of clean fill meets or exceeds the CUP Approved Depth.
- (b) All materials from excavations deeper than the CUP Approved Depth will be segregated to prevent mixing with the clean barrier soils and will be managed, and demarcation materials and covers replaced, in accordance with Section II of this Plan.

3. Activities Not Subject to Building Permits

- (a) All property owners must submit a landscape and excavation plan to the POA prior to beginning any excavation or grading activities.
- (b) All property owners within any Source Area as depicted on Exhibit A will be required to submit to the POA an irrigation plan in compliance with the provisions of Section III of this Plan. The POA will have the responsibility of approving and overseeing the implementation of the irrigation plan.
- (c) All grading activities which result in a final area with less than the CUP Approved Depth are prohibited. Importation of clean fill will be required to achieve desired landscaping elevations.
- (d) All excavations deeper than the cover soil layer (minimum 24-inches) will be prohibited except through the POA. All such excavation activities must be performed in compliance with the requirements of Section II of this Plan.

B. Mechanism of Implementation:

- 1. Section 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section IV A of this Plan.

**V. OVERSIGHT AND ENFORCEMENT ROLES AND RESPONSIBILITIES:
MODIFICATION OF PLAN**

Midvale City (the City) Department of Community and Economic Development will be the primary enforcement and oversight agency. Compliance with the ICs is the responsibility of the landowner, property owners associations, contractors and subcontractors working within the Site. The type and frequency of inspections and required maintenance of remedy components and related Site security, will be detailed in an O&M Plan to be developed in connection with the remedial action.

This Plan and the rules, regulations, ordinances, and covenants adopted hereunder may be revised from time to time as may be necessary or desirable to clarify its provisions or to incorporate new or modified requirements, as follows. The affected landowner(s), Midvale City, DEQ, or EPA may propose changes to this Plan. All proposed changes will be reviewed by the affected landowner(s), Midvale City, DEQ, and EPA prior to adoption by the Midvale City Council. Copies of revised documents will be delivered to all entities with oversight and enforcement roles and responsibilities listed below.

A. Midvale City responsibilities:

- Develop and process required ordinance changes to implement the provisions of this Plan.
- Undertake appropriate enforcement action to include repair of covers and barriers, if the landowner is unresponsive. City will enforce repair and collection of costs through Title 7 – Administrative Code Enforcement Program of the Midvale City Municipal Code.
- Review of site plan applications and issuance of final site plan approval.
- Review of road cut permit applications and issuance of permits.
- Initial site development and post-development inspections to ensure compliance with construction permit will include assessment of compliance with this plan.
- Verify compliance with requirements to allow single family residential uses in accordance with this plan will occur as part of the City's standard conditional use permit process.
- Verify that private covenants and deed restrictions are in place and contain applicable ICs for single family residential developments including the requirements of this Plan relating to homeowners association (or similar entity) responsibilities concerning landscaping, irrigation and excavation.

B. EPA and UDEQ Responsibilities:

- Review proposed provisions of Midvale City Code implementing this plan.
- Review groundwater pumping and discharge plan if construction pumping is necessary.

- Perform monitoring of groundwater quality to assess performance of remedial action.

C. Landowner/POA Responsibilities:

- Control Site access.
- *Implement the operation and maintenance plan for OU2.*
- Repair covers and barriers as necessary.
- Comply with provisions of construction permit, including air quality monitoring requirements.
- Comply with disposal facility requirements for off-Site waste disposal.
- Comply with appropriate regulations for disposition of construction wastewater.
- Establish private covenants and deed restrictions requiring that future land owners comply with applicable requirements set forth in this Plan.
- Prohibit disturbances of monitoring wells.
- Oversee and enforce excavation, irrigation, and landscaping controls.
- Oversee maintenance of landscaped areas.
- Provide access to EPA, UDEQ, Midvale City relating to environmental issues, including institutional controls and groundwater monitoring.

A summary of the oversight and enforcement roles and responsibilities may be prepared to facilitate the implementation of this Plan.

Exhibit B-3

**EXPLANATION OF SIGNIFICANT DIFFERENCES
MIDVALE SLAG SUPERFUND SITE
MIDVALE, UTAH
OPERABLE UNIT #1**

I. Introduction

This Explanation of Significant Differences ("ESD") presents the details of a second change to the remedy selected in the May, 1995 Record of Decision ("ROD") for Operable Unit 1 (OU1). EPA issued the first ESD in May, 1998, to eliminate the compacted soil cover and Institutional Control requirements for an undeveloped portion of the residential area.

The Midvale Slag Superfund Site ("Site") is located 12 miles south of Salt Lake City. The northern portion of the site extends into Murray City, Utah, but the majority of the site is in Midvale, Utah. The Site has an area of approximately 446 acres and is divided into two operable units, Midvale Slag OU1 and Midvale Slag OU2. OU1 contains the northern portion of the Site and includes the Winchester Estates Mobile Home Park and OU2 covers the southern 180 acres of the Site. The Site is bounded by 7800 South Street on the south, the Jordan River on the west, 6400 South Street on the north, 700 West Street on the northeast and east, and Holden Street on the southeast. A fence in line with 7200 South Street and just north of where the former smelter slag deposits were located defines the boundary between OU1 and OU2. Included within OU2 are the Silver Refinery Area, located in the southeast portion of OU2, and the Butterfield Lumber property, which lies in the northeast portion of OU2.

The Utah Department of Environmental Quality (UDEQ) was the lead agency for the investigations, feasibility studies, design and remedial action of OU1, and EPA was the support agency.

This ESD is issued in accordance with Section 117 (c) of the Comprehensive Environmental Response Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. 9617(c) and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). Section 300.435(c)(2)(i). The changes described in this ESD significantly change, but do not fundamentally alter, the remedy selected in the ROD with respect to scope, performance, or cost of the selected remedy.

This document will be incorporated into the Administrative Record maintained for this Site, as required by NCP Section 300.825(a)(2). This Administrative Record is available for review at:

Tyler Branch Library
8041 South Wood
Midvale, UT 84047
801-944-7641

EPA Region 8
999 18th Street
Suite 300
Denver, CO 80202-2466
303-312-6473

The ESD and its supporting documentation will be available for public review at these locations and a notice containing a brief summary of the action will be published in a major local newspaper, as required by NCP Section 300.432(c)(2)(i)(A) & (B).

II. Site History

Ore processing and smelting took place in the Midvale area for nearly 100 years. Milled ores were smelted to produce lead, arsenic, copper and other metals. The Midvale Slag site was the location of a large smelter that created wastes that were left on the site. Some of these substances are hazardous and must be cleaned up before the property can be reused.

EPA placed both the Midvale Slag smelter site and the adjacent Sharon Steel mill site, on the National Priorities List in February 1991. By 1999, EPA and UDEQ had cleaned up the Sharon Steel site by capping the tailings pile, building a wetlands, and cleaning up soil at 600 properties in Midvale City.

EPA and UDEQ issued a ROD for OU1 on April 28, 1995, which provided for the excavation of contaminated soils in the Winchester Estates residential development, placement of a soil cap over the undeveloped portion of the residential area, deed restrictions or other institutional controls to protect the integrity of the cap and to prohibit future residential use on other portions of the OU1 property absent additional cleanup to residential standards, and ground water monitoring. EPA and UDEQ issued an Explanation of Significant Differences (ESD) in May, 1998, to eliminate the compacted soil cover and Institutional Control requirements for an undeveloped portion of the residential area. UDEQ implemented the OU1 remedy under a cooperative agreement with EPA.

On October 29, 2002, EPA issued and UDEQ concurred on a ROD for OU2. This ROD addressed slag, mixed smelter wastes, contaminated soils and ground water. Information gathered during the OU2 studies confirmed that the main source of contamination was located on OU2 and provided further information regarding the ground water plume and downstream riparian zone.

III. Basis for the ESD

In 2003, EPA conducted a Five Year Review of the remedial actions implemented at the Site. The recommendations of the Five Year Review and additional sampling and analysis done during the course of developing the OU2 ROD warrant the issuance of this ESD to clarify certain alterations of the OU1 remedy decision. This ESD covers three general areas: land use restrictions, the riparian zone and the ground water remedy.

Land Use

The OU1 ROD required the implementation of Institutional Controls (ICs) for the undeveloped portions of OU1 in order to restrict future land use to commercial/industrial unless additional

remediation was conducted. At the time of that ROD, residential land use was not anticipated. Since the time of that ROD, the zoning for OU1 has changed to allow for multiple uses, including residential, recreational, commercial and light industrial. As a result, EPA conducted a review of the residential Preliminary Remediation Goals (PRGs) for protectiveness under the new zoning options. This document established a decision making process for determining if a parcel of land within OU1 was suitable for development for residential or recreational land use, and whether any restrictions or institutional controls were needed.

Riparian Zone

The Five Year Review points out changes in zoning that impact the riparian zone, which will be used as an ecological park/ recreation area in the future. Additional sampling on both sides of the Jordan River and in OU1 and OU2 indicates that similar levels and types of contamination exist on both sides of the River, throughout OU1 and OU2. As such, the ecological risk assessment conclusions in the OU2 ROD also apply to OU1.

Ground Water

The ROD for OU1 did not establish Remedial Action Objectives (RAOs) for ground water. Additional monitoring conducted during the OU2 investigative process verified OU2 as the source of the ground water contamination and shed further light on which contaminants were driving the ground water remedy.

IV. Description of Significant Differences

Land Use

The land use requirements for the undeveloped portion of OU1 can be changed to accommodate multiple land uses as allowed under the new zoning for this area with the incorporation of the *Technical Memorandum for Preliminary Remediation Goals and Decision-Making Process at Midvale Slag OUI*, dated March 2005 (hereinafter *Technical Memo*) into the decision-making process. In addition, the *Institutional Control Process Plan, Operable Unit No. 1, Midvale Slag Site ("ICPP")*, attached to the RD/RA Consent Decree, Civil No. 2:04 CV-843, shall control the process of implementing institutional controls, when needed.

The ICPP identified the "unrestricted use protocol" to achieve "unrestricted residential use" in a portion of OU1. If this protocol is met, the IC's do not apply.

Riparian Zone

As a result of the above-mentioned information, EPA believes that a consistent approach to remediation between OU1 and OU2, on both sides of the river in the riparian zone is required. The *Technical Memo* and the *ICPP* addressed requirements for maintaining protectiveness with recreational uses and those requirements should also be used for the riparian zone. The ROD for

OU2 sets out general requirements for the riparian zone. The Riparian Zone remedy will include some bank stabilization and/or possible revegetation to minimize site contaminated material from sloughing into the Jordan River. In addition, the OU2 ROD anticipated the formation of a riparian stakeholder group to focus on additional restoration work for the Jordan River.

The applicable or relevant and appropriate federal and state requirements (ARARs) specific to the riparian zone, as written in the OU2 ROD and added to this OU1 BSD, are:

Fish and Wildlife Coordination Act, 16 U.S.C. § 1531, et seq., 40 CFR 6.302(g). This statute and its implementing regulations require that federal agencies or federally funded projects ensure that any modification of any stream or other water body affected by any action authorized or funded by the federal agency provides for adequate protection of fish and wildlife resources. U.S. Fish and Wildlife is actively involved in activities related to the Jordan River and its riparian corridor.

Migratory Bird Treaty Act, 16 U.S.C. §§ 703, et seq. This act establishes a federal responsibility for the protection of the international migratory bird resource and requires continued consultation with the U.S. Fish and Wildlife Service during remedial design and remedial construction to ensure that the cleanup of the Site does not unnecessarily impact migratory birds. EPA's consultation requirements are being met (1) through direct participation by U.S. Fish and Wildlife Service representatives on the inter-agency site investigation and remedial action planning and management team and (2) through continued consultation during remedial design and remedial construction.

Floodplain Management Regulations, 40 CFR 6.302(b), Executive Order No. 11988. These regulations require that actions be taken to avoid, to the extent possible, adverse effects associated with direct or indirect development of a floodplain or to minimize adverse impacts if no practicable alternative exists.

Protection of Wetlands, 33 USC Sec. 1344. The discharge of dredged or fill materials into waters of the United States is prohibited without a permit. Adverse impacts associated with the destruction or loss of wetlands and other special aquatic sites are to be avoided. Measures will be developed during remedial design to avoid, restore, or mitigate impacts to wetlands.

Protection of Wetlands, Executive Order 11990 - Protection of Wetlands. This order directs federal agencies to take actions to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agencies' responsibilities. In addition, this Executive Order requires the agencies to consider factors relevant to the remedy's effect on the survival and quality of the wetlands. The remedy will meet the requirements of this order through the implementation of proper surface water runoff controls from remedial action areas near wetlands.

Fugitive Dust Control, UAC R307-101. General requirements for compliance with National Ambient Air Quality Standards (NAAQS). Earth moving, grading, and excavating activities may produce fugitive dust and emissions. These requirements will be met during earth moving

activities through the implementation of an air monitoring and dust suppression program.

Fugitive Emissions and PM10, UAC 307-309. Specific requirements for fugitive dust control in Salt Lake County: Opacity caused by fugitive dust shall not exceed: (1) 10 percent at the property boundary and (2) 20 percent on site unless an approval order is issued. Earth moving, grading, and excavating activities may produce fugitive dust and emissions. These requirements will be met during earth moving activities through implementation of an air monitoring and dust suppression program.

Air Pollution Prohibited, UAC R307-102-1. Emission of air contaminants in sufficient quantities to cause air pollution is prohibited. The movement of wastes may result in the release of contaminants to air. These requirements will be met during earth moving activities through implementation of an air monitoring and dust suppression program.

Ground Water

The OU1 ROD required semi-annual monitoring of the ground water in OU1 for a period of 5 years after the implementation of the remedy. The additional ground water sampling indicates that a comprehensive ground water plan for the plume that underlies both OU1 and OU2 would be more effective. As such, the OU2 ROD selected a comprehensive ground water monitoring plan and developed RAOs for ground water that will apply to both OU1 and OU2.

The RAOs specific for ground water as written in the OU2 ROD and added to this OU1 ESD are:

- Prevent unacceptable risk of exposure to current and future human populations presented by direct contact, inhalation, or ingestion of contaminated ground water;
- Protect water quality of previously uncontaminated portions of the US&G Aquifer and the Deep Principal Aquifer as these aquifers are sources of drinking water;
- Provide that future discharge of contaminated ground water from the Site to the Jordan River is protective of the aquatic environment and designated uses;
- Restore ground water to beneficial use (if possible).

In addition, the ARARs selected in the OU2 ROD, as they apply to ground water, shall supercede those ARARs discussed and/or selected in the OU1 ROD.

The ARARs specific to the ground water remedy as written in the OU2 ROD and added to this OU1 ESD are:

SDWA National Primary Drinking Water Standards, 40 CFR 141, and Utah Primary Drinking Water Standards, UAC R309-103-2. These standards establish the MCL, MCLGs, national action levels, and state primary drinking water standards and/or action levels. See Table 9-5 in the OU2

ROD for a list of standards and action levels for COCs. These standards are relevant and appropriate for the remediation of ground water and will serve as long-term goals for the restoration of the contaminated portion of the US&G Aquifer. ACLs have been established for the contaminated portion of the US&G Aquifer as applicable standards.

Utah Ground Water Quality Standards, UAC R317-6-2. These standards establish state ground water quality standards. These standards are relevant and appropriate for the remediation of ground water and will serve as long-term goals for the restoration of the contaminated portion of the US&G Aquifer. ACLs have been established for the contaminated portion of the US&G Aquifer as applicable standards.

Standards of Quality for Waters of the State of Utah, UAC R317-2-6, R317-2-13.5, and R317-2-14. These standards establish use designations and numeric criteria for the segment of the Jordan River that borders the Midvale Slag site (from confluence with Little Cottonwood Creek to Narrows Diversion). Protection classes include:

- Class 2B - for secondary contact recreation, such as boating, wading
- Class 3A - for cold water species of game fish and aquatic life
- Class 4 - for agricultural uses and stock watering

See Table 9-5 in the OU2 ROD for a list of numeric criteria for COCs based on these designations. The remedy will meet these criteria to the extent that such criteria are not presently exceeded upstream of the Site. ACLs have been developed for contaminated ground water in the US&G Aquifer using these surface water criteria.

Definitions and General Requirements of Utah Water Quality Act, UAC R317-1. Provides definitions and general requirements for waste discharges to waters of the State of Utah. These requirements are applicable to the section of the Jordan River passing through OU2. The remedial action will meet these requirements by prohibiting the discharge of wastewaters generated during construction to the Jordan River.

Utah Ground Water Classes and Class Protection Levels, UAC R317-6-3 and UAC317-6-4. These standards provide for the establishment of classes and corresponding protection levels based on ground water characteristics. The US&G Aquifer has not been formally classified; however, these standards will be used as a guide for potential future use of the aquifer and as long-term goals for the restoration of the contaminated portion of the US&G Aquifer. ACLs have been established for the contaminated portion of the US&G Aquifer as applicable standards.

Well Drilling and Completion Standards, UAC R655-4. Establishes standards for drilling and abandonment of wells. The installation and abandonment of monitoring wells during the remedial action will meet these requirements.

V. Support Agency Comments

The State of Utah concurs with this ESD.

VI. Statutory Determinations

In accordance with CERCLA Section 121, 42 U.S.C. § 9621, EPA believes that the revised remedy improves the protection of human health and the environment, and completes the identification of applicable or relevant and appropriate federal and state requirements that were originally identified in the ROD. This ESD makes no changes to the remedy's use of permanent solutions and alternative treatment and resource recovery technologies.

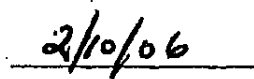
VII. Public Participation Requirements

The public participation requirements set out in NCP section 300.435(2)(c)(i) have been met.

AUTHORIZING SIGNATURE

This Explanation of Significant Differences (ESD) documents the second significant modification to the 1995 Record of Decision for Midvale Slag, Operable Unit 1.

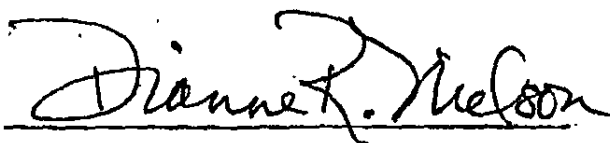
The following authorized official at EPA Region 8 approves the modification as described in this ESD.



Max H. Dodson
Assistant Regional Administrator
Office of Ecosystems Protection and Remediation
U.S. Environmental Protection Agency, Region 8

Date

The following authorized official at the State of Utah concurs with the modifications to the remedy selected in the 1995 Record of Decision for the Midvale Slag NPL site, Operable Unit 1, as described in this Explanation of Significant Differences (ESD).



02/14/06

Dianne R. Nielson
Executive Director
Utah Department of Environmental Quality

Date

Exhibit C

**ARTICLES OF INCORPORATION
FOR
BINGHAM JUNCTION MASTER PROPERTY OWNER'S ASSOCIATION, INC.
(A Nonprofit Corporation)**

RECEIVED
JAN 06 2006
Utah Div. Of Corp. & Comm. Code

The undersigned hereby signs and acknowledges these Articles of Incorporation for the purpose of forming a nonprofit corporation under the Utah Revised Nonprofit Corporation Act.

CLS

I.

NAME

The name of this corporation is BINGHAM JUNCTION MASTER PROPERTY OWNER'S ASSOCIATION, INC. ("Master Association").

II.

DURATION

The duration of the Master Association shall be perpetual.

III.

DEFINITIONS

The definitions set forth in the Community Declaration for Bingham Junction, as may be amended from time to time ("Community Declaration") shall apply to all capitalized terms set forth herein, unless otherwise defined herein.

IV.

NONPROFIT

The Master Association shall be a nonprofit corporation, without shares of stock.

V.

PURPOSES AND POWERS OF MASTER ASSOCIATION

5.1 Purposes. The purposes for which the Master Association is formed are as follows:

(a) To be and constitute the Master Association to which reference is made in the Community Declaration, as recorded or to be recorded, in the records of the Recorder of Salt Lake County, Utah. The Community Declaration, relates to the real estate in Midvale City, County of Salt Lake, State of Utah subject to all or portions of the Community Declaration (the "Real Property").

01-06-06P04:29 RCVD

(b) To operate and manage the planned community created by the Community Declaration and to operate and manage the Real Property and Common Elements included within the Community, situated in Midvale Cite, County of Salt Lake, State of Utah, subject to the Community Declaration, Bylaws, and such rules and regulations as the Master Association Board may, from time to time, adopt, for the purposes of enhancing and preserving the value of the Real Property and Common Elements for the benefit of the Owners.

(c) To perform all acts and services and exercise all powers and duties in accordance with the requirements for a master association of owners charged with the administration of the Real Property and Common Elements as set forth in the Community Declaration or any amendment to the Community Declaration.

(d) To act for and on behalf of the Master Association in all matters deemed necessary and proper for the protection, maintenance and improvement of the lands and improvements owned by the Master Association and to act for and on behalf of the Real Property and Common Elements, including without limitation, representing the Master Association before any governmental body having jurisdiction over the Master Association or services provided to or from the Master Association.

(e) To eliminate or limit the personal liability of Board members or officers to the Master Association or to the Members or Owners for monetary damages for breach of fiduciary duty as Board member, as allowed by law.

(f) To promote the health, safety and welfare of all Members of the Association and of the Community and to provide and maintain a desirable community and environment for all Owners, tenants, guests and members of the public within the Community.

(g) To do any and all permitted acts suitable or incidental to any of the foregoing purposes to the fullest extent permitted by law, and do any and all acts that in the opinion of the Board will promote the common benefit and enjoyment of the occupants, residents and Members of the Community, and to have and to exercise any and all powers, rights and privileges which are granted under the Act, the Community Declaration, the Bylaws and the laws applicable to a nonprofit corporation of the State of Utah.

5.2 Purposes and Powers. The foregoing statements of purpose shall be construed as a statement of both purposes and powers. The purposes and powers stated in each clause shall not be limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers. The Master Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Master Association.

5.3 Restrictions Upon Purposes and Powers/Campaigns. The Master Association shall not participate or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

5.4 Dividends, Distribution, etc. The Master Association shall not pay any dividends. No distribution of the corporate assets to Members (as such) shall be made. Upon dissolution of

the Master Association, the assets shall be distributed as provided in these Articles of Incorporation.

VI.

DELEGATES, MEMBERSHIP RIGHTS AND QUALIFICATIONS

Voting members of the Master Association shall be as provided in the Community Declaration and the Bylaws. Any person who holds title to a Unit in Project Area shall be a Member of the Master Association as provided in the Bylaws. Voting rights and other rights of the Members may be vested in Delegates, as provided for in the Community Declaration, the Bylaws and as allowed for under the Utah Revised Nonprofit Corporation Act. In such event, the term "Members," as used in Utah nonprofit law, including the Utah Revised Nonprofit Corporation Act (as, for example, in statutory provisions requiring an annual meeting of members, permitting removal of directors by members or relating to voting on amendments to these Articles of Incorporation), shall be the Delegates, as applicable, elected as provided in the Community Declaration and Bylaws.

The Members may be of such classes of membership as established by the Community Declaration or the Bylaws.

VII.

REGISTERED AGENT

The current principal office of the Master Association is 100 East Bengal Blvd. #F203, Salt Lake City, UT 84121. The initial registered agent of the Master Association is Robert L. Soehrlen, at the registered address of 100 East Bengal Blvd. #F203, Salt Lake City, UT 84121. The principal office and the registered agent and office of the Master Association may change from time to time, by action of the Board.

VIII.

BOARD OF DIRECTORS/EXECUTIVE BOARD

The business and affairs of the Master Association shall be conducted, managed and controlled by a Board of Directors. The initial Board shall consist of not less than three (3) persons, the specific number to be set forth in the Bylaws. The duties, qualifications, number and term of the members of the Executive Board and the manner of their election, appointment and removal shall be set forth in the Bylaws. The Board shall exercise the powers granted to the Master Association, except those expressly reserved to the Members or Delegates, and the Board shall also administer the affairs of the Master Association in accordance with the provisions of these Articles, Bylaws, the Community Declaration and laws relating to and governing nonprofit corporations of Utah.

The Founder of the Community shall have additional rights and qualifications as provided under the Act and the Community Declaration, including the right to appoint members of the Board during the Period of Founder Control. The Founder or the Members may establish

such classes of membership of the Members and of the Board so as to reasonably allow for representation of the various communities included within the Community. With such classifications, the Members within a class may then elect only specified members of their class to the Board.

These Articles may not be amended in any manner that would modify any right of the Founder as defined in the Governing Documents without Founder's prior written consent.

IX.

AMENDMENT

Amendment of these Articles shall require the assent of at least two-thirds (2/3) of the total votes allocated to residential Units and two-thirds (2/3) of the votes allocated to non-residential Units by the Community Declaration at a meeting of the Members at which a quorum is present, in person or by proxy, or by mail provided, however, that no amendment to these Articles of Incorporation shall be contrary to or inconsistent with the provisions of the Community Declaration, and provisions within these Articles requiring the consent of the Founder for certain amendments must be complied with. Amendments may also be made pursuant to the assent of at least two-thirds (2/3) of the Delegates.

X.

ADDITIONS TO AND DELETIONS FROM THE REAL ESTATE

Additions to and deletions from the Real Property of the Community allowed for in the Community Declaration may be made only in accordance with the Act and the Community Declaration.

XI.

DISSOLUTION

In the event of the dissolution of the Master Association as a corporation, either voluntarily or involuntarily by the members hereof, by operation of law or otherwise, then the assets of the Master Association shall be deemed to be owned by the Members at the date of dissolution, in proportion to their allocated interests, unless otherwise agreed or provided by law, except that in the event of dissolution by the Secretary of State of Utah (for failure to file administrative or other documents with the Utah Secretary of State), the Master Association may be reinstated as allowed by law, in which event, assets of the Master Association shall remain assets of the Master Association.

XII.

INTERPRETATION

Express reference is hereby made to the terms and provisions of the Community Declaration, which shall be referred to when necessary to interpret, construe or clarify the

provisions of these Articles. In the event of conflict, the terms of the Community Declaration shall control over these Articles of Incorporation.

XIII.

INCORPORATOR

The name and address of the incorporator is as follows:

Robert L. Soehnen, President
Littleton, Inc.
100 East Bengal Blvd. #F203
Salt Lake City, UT 84121

IN WITNESS WHEREOF, the undersigned has signed these Articles of Incorporation in duplicate this 5th day of January, 2006

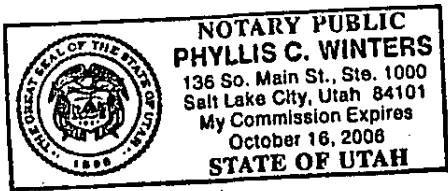
Robert L Soehngen

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

On this 5 day of January, 2005, personally appeared before me _____, the signer of the above instrument, who duly acknowledged to me that he executed the same.

Phyllis C. Winters
Notary Public
Residing in Salt Lake County

My Commission Expires:



Notary Public

My commission expires: _____

00-RECORDER
-COPY-

CONSENT OF REGISTERED AGENT

The undersigned hereby consents to the appointment as registered agent for the Community Association.

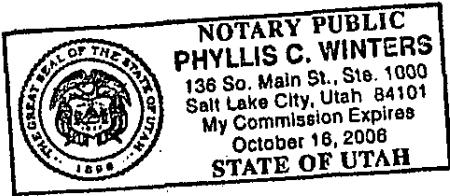
Robert H. Soelund
Authorized Agent

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

On this 6 day of January, ~~2007~~, personally appeared before me _____, the signer of the above instrument, who duly acknowledged to me that he executed the same.

Phyllis C. Winters
Notary Public
Residing in Salt Lake County

My Commission Expires:



Notary Public

My commission expires: _____

CO. RECORDER
-COPY-

Exhibit D

**BYLAWS OF THE
BINGHAM JUNCTION
MASTER PROPERTY OWNERS' ASSOCIATION, INC.**

I.

INTRODUCTION, PURPOSES AND DEFINITIONS

1.1 Introduction. These are the Bylaws of the BINGHAM JUNCTION MASTER PROPERTY OWNERS' ASSOCIATION, INC. (the "Master Association"), which Master Association operates under the Utah Revised Nonprofit Corporation Act, as amended.

1.2 Purposes. The purposes for which the Master Association was formed are to preserve and enhance the value of the properties of Members and to operate, govern, manage, supervise and care for the Bingham Junction master planned community ("Community") situated in the City of Midvale, State of Utah, as the Community was created pursuant to the Declaration for Bingham Junction ("Declaration") for the Project.

1.3 Definitions. Terms used herein shall have the meanings set forth in the Declaration unless expressly defined herein.

II.

MEMBERSHIP

2.1 Membership. Members of the Master Association ("Members") shall be the Owners subject to the Declaration. In the event a Unit is resubdivided into two or more Units, each Unit existing after such resubdivision shall be entitled to one Membership.

2.2 Voting Rights of Members. During the Period of Founder Control, except as specifically provided in the Declaration, the Founder or persons appointed by the Founder shall have the exclusive right to appoint all Officers and members of the Board. Thereafter, each Member shall have the right to cast votes for the election of the Board. Each Member shall be allocated votes as provided herein. Voting rights and other rights of the Members are direct unless the Board determines to provide for the election of Delegates, as provided herein.

2.3 Vote Allocations.

(a) Residential Use – Individually Owned Units. The individual Owner of any Unit that is used for single family purposes, if individually owned, shall be entitled to cast one (1) vote for each such Unit. This includes multi-family buildings and similar structures (such as condominiums) that are individually owned, as evidenced by a deed or similar form of conveyance.

(b) Multi-Family Residential Use – Apartments and Rentals. The Owner (such as a landlord) of any Unit that is used for multi-family residential purposes that are not

individually owned shall be entitled to cast one (1) vote for every five (5) dwelling units appurtenant to such Unit. This includes any form of multi-family buildings and structures (such as apartment complexes) in which dwellings are not individually owned.

(c) Commercial, Office and Other Uses. The Owner of any Unit that is used for commercial, retail, light industrial, office, or similar use, shall be entitled to cast the greater of one (1) vote or one (1) vote for each 2,000 square foot increment of floor area within the building(s) appurtenant to such Unit. The calculation of floor area of a building shall be the gross floor area of all floor(s) of the building(s) measured from the exterior of the structure, including any basement area, provided that floor areas not comprising a full 2,000 square foot increment will not be included and will not be entitled to a fractional vote. The Board may require as-built plans to be filed with the Master Association and may promulgate written standards governing the calculation of floor area for purposes of this Section.

(d) Undeveloped Units. The Owner of unimproved and undeveloped (*i.e.*, those without vertical development) Units not otherwise allocated votes as provided in subsections (a), (b), and (c) above, will be entitled to cast the greater of one (1) vote or one (1) vote for every twenty-thousand (20,000) square feet of land located within such Unit. For purposes of this allocation, fractional land areas shall be rounded to the nearest twenty-thousand (20,000) square feet.

2.4 Memberships Appurtenant. Each Membership shall be appurtenant to the fee title of an Owner. The person or persons who constitute the Owner of fee title shall automatically be the holder of the Membership appurtenant and the Membership shall automatically pass with fee title. No Member shall be entitled to resign from the Master Association. Membership shall not be assignable separate and apart from fee simple title except that an Owner may assign some or all of their rights as an Owner and as a Member to a current tenant or holder of a security interest and may arrange for a current tenant to perform some or all of such Owner's obligations, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of an Owner under the Declaration. The rights acquired by any such tenant or holder of a security interest shall be extinguished automatically upon termination of the tenancy or security interest. The assignment of rights by an Owner pursuant to this Section shall not be subject to any present or future statutory time limit for the duration of proxy rights.

2.5 Voting by Joint Owners. If there is more than one person who constitutes an Owner (for example, tenants in common and joint tenants), each such person shall be entitled to attend any meeting of Members but the voting power attributable to such Units shall not be increased. In all cases in which more than one person constitutes an Owner, including instances of husband and wife, then, unless written notice to the contrary, signed by any one or such persons, is given to the Board prior to the meeting, any one such person shall be entitled to cast, in person or by proxy, the vote attributable to such Unit, and it shall be presumed that they are in agreement with respect to the manner that such vote is cast. If, however, more than one person constituting such Owner attends a meeting in person or by proxy, and seeks to cast the vote attributable to the Unit, then the act of those persons owning a majority in interest shall be entitled to cast the vote attributable to the Unit.

2.6 Resolution of Voting Disputes. In the event of any dispute as to the entitlement of

any Member to vote or as to the results of any vote of Members at a meeting, the Board shall act as arbitrators and the decision of a disinterested majority of the Board shall, when rendered in writing, be final and binding; provided, however, that the Board shall have no authority or jurisdiction to determine matters relating to the entitlement of Founder to vote or relating to the manner of exercise by Founder of its voting rights.

2.7 Suspension of Voting and Member Rights. During any period in which a Member shall be in default in the payment of any Assessment levied by the Master Association, the voting rights of such Member shall be deemed suspended by the Board (as hereafter defined), without notice or hearing, until such Assessments have been paid. Such rights of a Member may also be suspended, after notice or hearing, during any period of violation of any other provision of the Declaration, Articles or Bylaws.

III.

MEETINGS OF MEMBERS

3.1 Place of Meetings of Members District. Meetings of the Members shall be held in the Community, or in the greater Salt Lake City area, as designated by the Board or the Chairman or an officer or agent, in the notice of the meeting.

3.2 Annual Meetings of Members. Beginning after the Period of Founder Control has expired, annual meetings of the Master Association shall be held to elect members of the Board and to transact such other business as may properly come before the meeting. At these meetings, Board members shall be elected by ballot of the Members, in accordance with the provisions of these Bylaws, the Declaration and Articles. The Members may transact other business as may properly come before them at these meetings.

3.3 Special Meetings of Members. Special meetings of the Members may be called by the Board or by Members holding not less than ten percent (10%) of the total votes of all Members. No business shall be transacted at any special meeting except as indicated in the notice thereof.

3.4 Record Date for Member Meetings. For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or in order to make a determination of such Members for any other proper purpose, the Board may fix, in advance, a date as the record date for any such determination of Members. The record date shall be not more than fifty (50) days prior to the meeting of Members or the event requiring a determination of Members.

3.5 Notice of Meetings of Members. Written notice of each meeting of Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting at least ten (10) days before, but not more than fifty (50) days before such meeting, to each Member entitled to vote. Notice may be provided by telephone, facsimile, e-mail, or by first class mail, postage prepaid. 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. No matters shall be heard nor action adopted at a special meeting except as stated or allowed in the notice.

3.6 Proxies of Members. A Member entitled to vote may vote in person or by proxy in writing executed by the Member or his duly authorized attorney-in-fact and filed with the Secretary of the meeting prior to the time the proxy is exercised. The filing of a proxy by a Member may include, without limitation, the transmission of the same by facsimile, e-mail or other electronic transmission to the Secretary of the meeting provided that such transmitted proxy shall set forth or be transmitted with written evidence from which it can be determined that the Member transmitted or authorized the transmission of the proxy. Any proxy may be revoked, prior to the time the proxy is exercised, by a Member in person at a meeting or by revocation in writing filed with the Secretary. A proxy shall automatically cease upon the conveyance by a Member of their Unit. No proxy shall be valid after eleven (11) months after the date of its execution unless otherwise provided in the proxy and no proxy shall be valid in any event for more than three years after its date of execution. Any form of proxy furnished or solicited by the Master Association and any form of written ballot furnished by the Master Association shall afford an opportunity thereon for Members to specify a choice between approval and disapproval of each matter or group of related matters which is known, at the time and form of proxy or written ballot is prepared, may come before the meeting and shall provide, subject to reasonably specified conditions, that if a Member specifies a choice with respect to any such matter, the vote shall be cast in accordance therewith.

3.7 Quorum at Members' Meetings. Except as may be otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the presence, in person or by proxy, of Members entitled to cast at least ten percent (10%) of the votes of all Members shall constitute a quorum at any meeting. Members present in person or by proxy at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum. If the required quorum is not present in person or by proxy at any such meeting of Members, another meeting may be called, subject to the notice requirements herein above specified, and the presence, in person or by proxy, of Members entitled to cast at least five percent (5%) of the votes of all Members, shall, except as may be otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, constitute a quorum at such meeting.

3.8 Adjournment of Members' Meetings. Members present in person or by proxy at any meeting may adjourn the meeting from time to time, whether or not a quorum shall be present in person or by proxy, without notice other than announcement at the meeting, for a total period or periods not to exceed 30 days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present in person or by proxy, any business may be transacted which might have been transacted at the meeting as originally called.

3.9 Vote Required at Members' Meetings. At any meeting if a quorum is present, a majority if the votes present in person or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law (including, without limitation, the Act), the Declaration, the Articles of Incorporation or these Bylaws.

3.10 No Cumulative Voting. Cumulative voting by Members in the election of Board

members shall not be permitted.

3.11 Order of Business. The order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) report of the Master Association; (e) election of the Board (at annual meetings or special meetings held for such purpose); and (f) other business if noticed, as provided for in these Bylaws.

3.12 Certification of Election after Meeting. Promptly after any meeting of Members to elect the Board, the Secretary or their agent shall certify in writing the name and address of the Board members elected, and the time and place of the meeting at which the Board members were elected.

3.13 Expense of Meetings. The Master Association shall bear the expenses of all meetings of Members.

3.14 Action by Written Ballot. Any action that may be taken at any annual, regular, or special meeting of the Members may be taken without a meeting by written ballot delivered to every Member entitled to vote on the matter. The procedure for actions by written ballot shall be governed by the Utah Revised Nonprofit Corporation Act.

IV.

BOARD

4.1 Number and Potential Classes.

(a) The affairs of the Community and the Master Association shall be governed by a Board, which shall during the Period of Founder Control initially consist of three (3) members, elected or appointed as provided in the Declaration. Upon expiration of the Period of Founder Control, the then-sitting Board will be dissolved and a new Board consisting of three (3) members shall be elected as provided in the Declaration and these Bylaws.

(b) The Founder may voluntarily surrender any and all of the foregoing rights to appoint and remove Officers and members of the Board before termination of the Period of Founder Control, but in that event, the Founder may require, for the duration of the Period of Founder Control, that specified actions, as described in a recorded instrument executed by the Founder, be approved by the Founder before they become effective.

(c) The Founder or the Owners may establish such classes of membership of the Owners and of the Board so as to reasonably allow for representation of the various neighborhoods included within the Community

4.2 Qualifications of Members of the Board. Board members shall be natural persons who are eighteen (18) years of age or older. Except as appointed by Founder, they must be an Owner or, if the Owner is a partnership, corporation or other entity not a natural person, must be an authorized agent of such partnership, corporation or other entity. If a Board member conveys or transfers title to his/her unit, or a Board member who is an authorized agent or a partnership, corporation or other entity ceases to be such authorized agent, or if the partnership, corporation or other entity transfers title to its Unit, such Board member's term shall immediately terminate and a new Board member shall be selected as promptly as possible. There shall be no limit on the number of terms that may be served.

4.3 Nominations for the Board. Except for appointees by Founder, nomination for election to the Board shall be made by a nominating committee. Nominations may also be made from the floor at the annual meetings of Members. The nominating committee shall consist of a chairman, who shall be a member of the Board, and two or more Members. The nominating committee shall be appointed by the Board prior to each annual meeting of the Members to serve from the close of such annual meetings until the close of the next annual meetings and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

4.4 Term of Office for Board members. Beginning after the Period of Founder Control has expired, the terms of office of Board members shall be three (3) years or until such time as a successor is elected, and the terms the Board shall be staggered and terms of one-third (1/3) of the Board members shall expire annually. During the Period of Founder Control, Board members shall serve at the pleasure of the Founder, subject to Mercer's right to select one Board

member pursuant to Section 3.1 of the Declaration.

4.5 Removal of Board members. The Members, by a vote of at least two-thirds (2/3) of the votes at any meeting of the Members at which a quorum is present, may remove a Board member, other than a Board member elected or appointed by class (if any classes are designated by the Founder), and other than directors appointed by Founder. Board members appointed by the Founder may not be removed by the Members under this section of the Bylaws. Board members sought to be removed shall have the right to be present at such meeting and shall be given the opportunity to speak to the Members prior to a vote to remove being taken. Upon removal, the Members, by majority vote, shall then elect new Members of the Board to replace those Members removed.

4.6 Vacancies on the Board. Vacancies in the Board, unless filled by Founder pursuant to its appointment powers, that are caused by any other reason (other than removal by the Members) shall be filled by election at a special meeting of Members or shall be filled by the affirmative vote of a majority of the remaining members of the Board, though less than a quorum. Each person so appointed shall be a Board member who shall serve for the remainder of the unexpired term.

4.7 Compensation. No Board member shall receive any compensation from the Master Association for acting as such unless approved by a majority of the total Member votes in the Master Association at a regular or special meeting of the Master Association. Any Board member may be reimbursed for expenses incurred on behalf of the Master Association upon approval of a majority of the other Board members. Nothing herein shall prohibit the Master Association from compensating a Board member, or any entity with which a Board member is affiliated, for services or supplies furnished to the Master Association in a capacity other than as a Board member pursuant to a contract or agreement with the Master Association, provided that such Board member's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Board member.

4.8 Resignation of Board members. Any member of the Board may resign at any time by giving written notice to the Chairman, to the Secretary or to the Board stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

V.

MEETINGS OF THE BOARD

5.1 Location of Meetings and Open Meetings of the Board. All meetings of the Board shall be at the principal office of the Master Association, if any, or at such other place, within or reasonably convenient to the Community. All meetings shall be open to attendance by Members.

5.2 Annual Meeting of the Board. Beginning after the Period of Founder Control has expired, annual meetings of the Board shall be held on the same date as, or within ten (10) days

following, the annual meeting of Members. The business to be conducted at the annual meeting of the Board shall consist of the appointment of Officers and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board shall be necessary if the meeting is held on the same day and at the same time and place as the annual meeting of Members.

5.3 Regular Meetings of the Board. In addition to the annual meeting, at least one other regular meeting of the Board shall be held each year after expiration of the Period of Founder Control at such place and hour as may be fixed by the Board, without notice. The Board may set a schedule of additional regular meetings by resolution, and no further notice is necessary to constitute regular meetings, except as may be required by law.

5.4 Special Meetings of the Board. Special meetings of the Board shall be held when called by the Chairman of the Master Association, or by any two Board members, after notice to each Board member.

5.5 Notice of Board Meetings. In the case of all meetings of the Board for which notice is required, notice stating the place, day and hour of the meeting shall be delivered not less than three (3) nor more than fifty (50) days before the date of the meeting, by mail, telephone, e-mail or personally, by or at the direction of the persons calling the meeting, to each member of the Board. If mailed, such notice shall be deemed to be delivered at 5:00 p.m. on the second business day after it is deposited in the mail. If by facsimile, such notice shall be deemed delivered when received at the facsimile number for each member of the Board as appears on the records of the Master Association. If by telephone, such notice shall be deemed to be delivered when given by telephone to the member of the Board or to any person answering the telephone who sounds competent and mature at his home or business telephone number as either appears on the records of the Master Association. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of such meeting.

5.6 Waiver of Notice of Board Meetings. Any Board member may waive notice of any meeting in writing. Attendance by a Board member at any meeting of the Board shall constitute a waiver of notice unless the Board member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice.

5.7 Quorum for Board Meeting. At all meetings of the Board, a majority of the Board members shall constitute a quorum for the transaction of business. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting.

5.8 Proxies of the Board. For the purpose of determining a quorum with respect to a particular proposal and for the purposes of casting a vote for or against that particular proposal, a Board member may execute, in writing a proxy, to be held by another Board member. The proxy shall specify either a yes, no or abstain vote on each particular issue for which the proxy was executed. Proxies which do not specify a yes, no or abstain vote shall not be counted for the purpose of having a quorum present or as a vote on the particular proposal before the Board.

5.9 Adjournment of Board Meetings. Members of the Board present at any meeting of the Board may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than an announcement at the meeting, for a total period or periods not to exceed 30 days after the date set for the original meeting. At any announced meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which may have been transacted at the meetings originally called.

5.10 Vote Required at Board Meetings. At any meeting of the Board, if a quorum is present, a majority of the votes present in person and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law (including, without limitation, the Act), the Declaration, the Articles of Incorporation or these Bylaws.

5.11 Consent to Corporate Action of the Board. The Board members shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the Board members. Any action so approved shall have the same effect as though taken at a meeting of the Board members. The Secretary shall file these consents with the minutes of the meetings of the Board.

5.12 Telephone Communication of Board Members in Lieu of Attendance. A Board member may attend a meeting of the Board by using an electronic or telephonic communication method whereby the Board member may be heard by the other members and may hear the deliberations of other members of any matter properly brought before the Board. The Board member's vote shall be counted and his or her response noted as if that Board member was present in person on that particular matter.

VI.

POWERS AND DUTIES OF THE BOARD

6.1 Powers and Duties. The Board may act in all instances on behalf of the Master Association, except as provided in the Declaration, the Articles, these Bylaws or the Act. The Board shall have, subject to the limitations contained in the Declaration, the Articles, these Bylaws and the Act, the powers and duties necessary for the administration of the affairs of the Master Association and of the Community, and for the operation and maintenance of the Community as a first class community, including the following powers and duties:

- (a) Adopt the initial Bylaws;
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) As a part of the adoption of the regular budget the Board shall include an amount which, in its reasonable business judgment, will establish and maintain a reserve fund for the replacement of those improvements that it is obligated to maintain, based upon age, remaining life, quantity and replacement cost;
- (d) Collect Assessments to the extent expressly permitted by the Declaration;

- (e) Hire and discharge an independent managing agent, provided that any agreement for professional management of the Community must provide for the termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days' written notice;
- (f) Hire and discharge employees, independent contractors and agents other than managing agents;
- (g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Declaration or Bylaws in the Master Association's name, on behalf of the Master Association or two (2) or more Members on matters affecting the Community.
- (h) Make contracts and incur liabilities consistent with the Declaration;
- (i) Acquire, hold, encumber and convey, in the Master Association's name, any right, title or interest to real estate or personal property;
- (j) Impose a reasonable charge for late payment of Assessments and, after notice and hearing, levy reasonable fines or Assessments provided for or allowed in the Declaration or Bylaws;
- (k) Keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements of the Master Association;
- (l) Borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board may deem necessary and give security therefor;
- (m) Impose a reasonable charge for the preparation and recording of amendments to the Declaration, liens, or statements of unpaid Assessments;
- (n) Provide for the indemnification of the Master Association's Officers and the Board and maintain Board members' and Officers' liability insurance;
- (o) Cause all Board members, Officers, employees or agents having fiscal responsibilities to be bonded or insured, as it may deem appropriate and in such amounts as it may deem appropriate;
- (p) Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;
- (q) Exercise for the Master Association all powers, duties, rights and obligations in or delegated to the Master Association and not reserved to the Members by other provision of the these Bylaws, the Articles, the Declaration or the Act; and
- (r) Exercise any other powers conferred by the Declaration or Bylaws.

6.2 Limits on Delegation, Requirements for Master Association Funds and Financial Statements. If the Master Association delegates powers of the Board or Officers relating to collection, deposit, transfer or disbursement of Master Association funds to other persons or to a manager or managing agent, the Master Association shall require the following:

(a) That the other persons or managing agent maintain fidelity insurance coverage or a bond in an amount not less than fifty thousand dollars (\$50,000) or such higher amount as the Board may require.

(b) The other persons or managing agent maintain all funds and accounts of the Master Association separate from the funds and accounts of other associations managed by the other persons or managing agent and maintain all reserve accounts of each association so managed separate from operational accounts of the Master Association;

(c) That an annual accounting for Master Association funds and a financial statement be prepared and presented to the Master Association by a certified public accountant.

VII.

OFFICERS AND THEIR DUTIES

7.1 Enumeration of Offices. The Officers of this Master Association shall be a Chairman, Vice Chairman, Secretary and Treasurer, and such other Officers as the Board may from time to time create by resolution. The offices of Secretary and Treasurer may be held by the same person.

7.2 Appointment of Officers. The Officers shall be appointed by the Board at the annual meeting of each new Board. The Officers shall hold office at the pleasure of the Board.

7.3 Special Appointments. The Board may appoint or elect such other Officers as the affairs of the Master Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

7.4 Resignation and Removal. Any Officer may resign at any time by giving written notice to the Board, the Chairman or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective. Any Officer may be removed from office with or without cause by a majority of the Board.

7.5 Vacancies. A vacancy in any office may be filled by appointment by the Board by majority vote of the Board. The Officer appointed to such vacancy shall serve at the pleasure of the Board.

7.6 Duties. The Duties of the Officers are as follows:

(a) Chairman. The Chairman shall have all of the general powers and duties which are incident to the office of Chairman of a Utah nonprofit corporation. The Chairman may cause to be prepared and may execute amendments, attested by the Secretary, to the

Declaration and these Bylaws on behalf of the Master Association, following authorization or approval of the particular amendment as applicable.

(b) Vice Chairman. The Vice Chairman shall take the place of the Chairman and perform the Chairman's duties whenever the Chairman is absent or unable to act. If neither the Chairman nor the Vice Chairman present is able to act, the Board shall appoint some other Board member to act in the place of the Chairman on an interim basis. The Vice Chairman shall also perform other duties imposed by the Board or by the Chairman.

(c) Secretary. The Secretary shall have charge or shall keep the minutes of all meetings of the Members and proceedings of the Board. The Secretary shall have charge of the Master Association's books and papers and shall perform all the duties incident to the office of Secretary of a Utah nonprofit corporation. The Secretary may cause to be prepared and may attest to execution by the Chairman of amendments to the Declaration and the Bylaws on behalf of the Master Association, following authorization or approval of the particular amendment as applicable.

(d) Treasurer. The Treasurer shall be responsible for Master Association funds and for keeping full and accurate financial records and books of accounts showing all receipts and disbursements and for the preparation of all required financial data. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Board and shall perform all of the duties incident to the office of Treasurer of a Utah nonprofit corporation.

7.7 Delegation. The duties of any Officer may be delegated to a manager employed by the Master Association, or another Board member, provided, however, that by so doing the Officer shall not be relieved of any responsibility incumbent upon such office under these Bylaws or under Utah law.

7.8 Agreements, Contracts, Deeds, Checks, Etc. Except as provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Master Association shall be executed by any Officer of the Master Association or by any other person or persons designated by the Board.

7.9 Statements of Unpaid Assessments. The Treasurer, a manager employed by the Master Association, if any, or, in their absence, any Officer having access to the books and records of the Master Association may prepare, certify, and execute statements of unpaid Assessments.

7.10 Compensation. Compensation of Officers shall be subject to the same limitations as imposed in these Bylaws on compensation of Board members.

VIII.

COMMITTEES

8.1 Designated Committees. The Master Association may appoint committees as deemed appropriate in carrying out its purposes, subject to the Declaration. Committees shall

have authority to act only to the extent designated in the Governing Documents or delegated by the Board.

IX.

ENFORCEMENT

9.1 Abatement and Enjoinment of Violations. The violation of any provision of the Governing Documents shall give the Board the right, in addition to any other rights set forth in these Bylaws, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

9.2 Fines for Violation. By action of the Board, following notice and hearing, the Board may levy reasonable fines for a violation of the Governing Documents which persist after notice and hearing, but in no event shall this amount exceed the amount necessary to insure compliance with the rule or order of the Board.

X.

BOOKS AND RECORDS

10.1 Records. The Master Association or its manger, if any, shall keep the following records:

(a) An account for each Member, which shall designate the name and address of each Member, the amount of each Assessment, the dates on which each Assessment comes due, any other fees, costs or amounts payable by the Member, the amounts paid on the account and the balance due;

(b) The most recent regularly prepared balance sheet and income and expense statement, if any, of the Master Association;

(c) The current budgets;

(d) A record of any unsatisfied judgments against the Master Association and the existence of any pending suits in which the Master Association is a defendant;

(e) A record of insurance coverage provided for the benefit of Members and the Master Association;

(f) Tax returns for state and federal income taxation;

(g) Minutes of proceedings of meetings of the Members, Board members, committees of Board members and waivers of notice; and

(h) A copy of the most current versions of the Declaration, Articles, Bylaws and Resolutions of the Board, along with their exhibits and schedules.

10.2 Examination. The books, records and papers of the Master Association (excepting any confidential and/or privileged books, records or papers) shall at all times, during normal business hours and after reasonable notice, be subject to inspection and copying by any Member, at their expense, for any proper purpose and subject to applicable law on confidentiality and right to privacy. The Board shall determine reasonable fees for copying.

XI.

INDEMNIFICATION

11.1 Obligation to Indemnify.

- (a) The Master Association shall indemnify any person:
 - (i) Who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Master Association);
 - (ii) By reason of the fact that the person is or was a Board member, Officer or committee member of the Master Association;
 - (iii) Provided that the person is or was serving at the request of the Master Association in such capacity; and
 - (iv) Such person (A) acted in good faith; (B) acted in a manner which such person reasonably believed to be in the best interests of the Master Association; and (C) with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.

(b) The Master Association's obligation for indemnification shall include: (i) reasonable expenses (including expert witness fees, attorneys' fees and costs); (ii) judgments and fines; and (iii) reasonable amounts paid in settlement.

11.2 Determination Required. The Board shall determine whether the person requesting indemnification has met the applicable standard of conduct set forth above. Such determination shall be made by:

- (a) By majority vote of those members of the Board who were not parties to such action, suit or proceeding; or
- (b) By independent legal counsel in a written opinion if a majority of the members of the Board are parties to such action, suit or proceeding so directs; or
- (c) By a vote of the Members if a majority of the members of the Board are parties to such action, suit or proceeding so directs.
- (d) Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner reasonably believed to be in the best interests of the Master Association and, with respect to any criminal

action or proceeding, had reasonable cause to believe the conduct was unlawful.

11.3 Payment in Advance of Final Disposition. The Master Association shall pay for or reimburse the reasonable expenses as described above in advance of final disposition of the action, suit or proceeding if the person requesting indemnification provides the Board with:

(a) A written affirmation of that person's good faith belief that he or she has met the standard of conduct described above; and

(b) A written statement that such person shall repay the advance if it is ultimately determined that he or she did not meet the standard of conduct described above.

11.4 No Limitation of Rights. The indemnification provided in this Article shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Members or disinterested members of the Board, or otherwise, nor by any rights which are granted pursuant to the Act and the Utah Revised Nonprofit Corporation Act, as those statutes may be amended from time to time.

11.5 Board members' and Officers' Insurance. The Master Association may purchase and maintain insurance on behalf of any person who is or was an Officer or member of the Board, the manager, committee members or anyone acting at the direction of the Board, covering defense and liability expenses arising out of any action, suit or proceeding asserted against such person by virtue of such person's actions on behalf of the Master Association or at the direction of the Board, whether or not the Master Association would have the power to indemnify such person against such liability under provisions of this Article.

XII.

MISCELLANEOUS

12.1 Notices to the Master Association. All notices to the Master Association or the Board shall be delivered to the location of the regularly established office of the Master Association, or to such other address as the Board may designate by written notice to all Members.

12.2 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

XIII.

AMENDMENTS

13.1 Bylaw Amendments. These Bylaws may be amended only by the affirmative vote of a majority of the Board at any regular or special meeting of the Board, provided that a quorum is present at any such meeting.

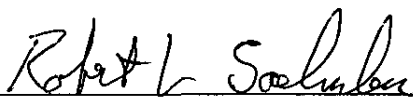
13.2 Restriction on Amendments. No amendment of the Bylaws of this Master

Association shall be adopted which would affect or impair the validity or priority of any security interest covering any Unit, or which would materially change the provisions of the Bylaws with respect to a first lien security interest or the interest of an institutional mortgagee of record. Additionally, these Bylaws may not be amended during the Period of Founder Control without Founder's prior written consent, which consent Founder may withhold in its sole discretion.

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CERTIFICATION

I, the undersigned, do hereby certify that I am the Founder of the Master Association, Inc., a Utah nonprofit corporation, and that the foregoing Bylaws constitute the Bylaws of said Master Association as duly adopted by the Board.

A handwritten signature in cursive script, reading "Robert L. Soehlen", is written over a horizontal line.

Robert L. Soehlen, President
Littleton, Inc.

Exhibit E

River Walk at Bingham Junction
Net Subdivision—Remainder

Beginning at a point on the west line of 700 West Street, said point being located South $0^{\circ}18'00''$ West 1312.73 feet along the section line and North $89^{\circ}42'00''$ West 33.00 feet from the East Quarter Corner of Section 23, Township 2 South, Range 1 West, Salt Lake Base and Meridian and running:

thence South $0^{\circ}18'00''$ West 1311.77 feet;
thence South $0^{\circ}17'31''$ West 312.21 feet;
thence North $89^{\circ}42'29''$ West 20.00 feet;
thence South $0^{\circ}17'31''$ West 821.40 feet;
thence South $45^{\circ}13'12''$ West 35.40 feet to the North line of Jordan River

Boulevard;

thence North $89^{\circ}51'08''$ West 384.09 feet along the North line of Jordan River

Boulevard;

thence Northwesterly 632.27 feet along the arc of a 1210.74 foot radius curve to the right (center bears North $0^{\circ}08'52''$ East and the long chord bears North $74^{\circ}53'30''$ West 625.11 feet with a central angle of $29^{\circ}55'15''$), said curve following along the North line of Jordan River Boulevard;

thence North $13^{\circ}08'41''$ West 34.61 feet along the North line of Jordan River

Boulevard;

thence North $56^{\circ}56'59''$ West 76.00 feet;

thence North $33^{\circ}04'16''$ East 25.03 feet;

thence Northwesterly 260.97 feet along the arc of a 1160.74 foot radius curve to the right (center bears North $34^{\circ}55'34''$ East and the long chord bears North $48^{\circ}37'58''$ West 260.42 feet with a central angle of $12^{\circ}52'55''$);

thence North $42^{\circ}11'31''$ West 215.55 feet;

thence Northwesterly 448.65 feet along the arc of a 1544.90 foot radius curve to the left (center bears South $47^{\circ}48'29''$ West and the long chord bears North $50^{\circ}30'42''$ West 447.08 feet with a central angle of $16^{\circ}38'21''$);

thence South $29^{\circ}41'07''$ West 26.63 feet;

thence North $14^{\circ}19'55''$ West 2.31 feet;

thence North $60^{\circ}18'00''$ West 76.00 feet;

thence South $73^{\circ}43'56''$ West 3.45 feet;

thence North $29^{\circ}41'07''$ East 27.43 feet;

thence Northwesterly 778.10 feet along the arc of a 1544.90 foot radius curve to the left (center bears South $28^{\circ}12'06''$ West and the long chord bears North $76^{\circ}13'38''$ West 769.90 feet with a central angle of $28^{\circ}51'27''$);

thence South $89^{\circ}20'39''$ West 84.05 feet;

thence North $3^{\circ}30'25''$ West 60.00 feet;

thence South $89^{\circ}20'39''$ West 166.35 feet;

thence North $1^{\circ}52'25''$ West 364.68 feet;

thence Northeasterly 322.41 feet along the arc of a 200.00 foot radius curve to the right (center bears North 88°07'35" East and the long chord bears North 44°18'28" East 288.62 feet with a central angle of 92°21'47");
thence South 89°30'38" East 511.62 feet;
thence South 44°40'29" East 145.89 feet;
thence Northeasterly 74.00 along the arc of a 210.00 foot radius curve to the right (center bears South 64°51'53" East and the long chord bears North 35°13'49" East 73.62 feet with a central angle of 20°11'24");
thence North 45°19'31" East 216.98 feet;
thence Northeasterly 17.64 feet along the arc of a 15.00 foot radius curve to the left (center bears North 44°40'29" West and the long chord bears North 11°38'06" East 16.64 feet with a central angle of 67°22'48");
thence Northeasterly 157.92 feet along the arc of a 50.00 foot radius curve to the right (center bears North 67°56'42" East and the long chord bears North 68°25'27" East 100.00 feet with a central angle of 180°57'30");
thence North 45°19'31" East 24.79 feet;
thence Northeasterly 168.65 feet along the arc of a 215.00 foot radius curve to the right (center bears South 44°40'29" East and the long chord bears North 67°47'48" East 164.36 feet with a central angle of 44°56'34");
thence South 89°43'55" East 62.87 feet;
thence North 0°31'16" West 492.24 feet;
thence North 89°28'44" East 1534.75 feet to the Point of Beginning.

Said parcel contains 4,538,511 square feet or 103.78 acres.