

12340556
8/11/2016 3:27:00 PM \$165.00
Book - 10463 Pg - 217-264
Gary W. Ott
Recorder, Salt Lake County, UT
PROVO LAND TITLE COMPANY
BY: eCASH, DEPUTY - EF 48 P.

**DECLARATION
OF
COVENANTS, CONDITIONS, AND
RESTRICTIONS AND
RESERVATION OF EASEMENTS
FOR
THE TOWERS
A Residential Subdivision in Herriman, Utah**

**AN EXPANDABLE
PLANNED UNIT DEVELOPMENT**

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
RECITALS.....	1
DECLARATION	2
ARTICLE I. DEFINITIONS	2
ARTICLE II. PROPERTY DESCRIPTION.....	6
ARTICLE III. MEMBERSHIP AND VOTING RIGHTS.....	6
ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS	7
ARTICLE V. BUDGET AND ASSESSMENTS	9
ARTICLE VI. DUTIES AND POWERS OF THE ASSOCIATION	15
ARTICLE VII. MAINTENANCE.....	20
ARTICLE VIII. INSURANCE	23
ARTICLE IX. USE RESTRICTIONS.....	28
ARTICLE X. ARCHITECTURAL CONTROLS.....	31
ARTICLE XI. ENFORCEMENT.....	33
ARTICLE XII. SPECIAL DECLARANT RIGHTS.....	33
ARTICLE XIII. RIGHTS OF FIRST MORTGAGEE.....	37
ARTICLE XIV. RIGHT OF ENTRY	38
ARTICLE XV. AMENDMENTS	38
ARTICLE XVI. MISCELLANEOUS.....	39
CERTIFICATION.....	42
EXHIBIT A.....	43
EXHIBIT B.....	44

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE TOWERS ("Declaration") is made and executed this ___ day of _____, 2016 by Wasatch Land Company, a Utah corporation. ("Declarant") and becomes effective when recorded with the Salt Lake County Recorder's Office.

RECITALS

- A. Capitalized terms in this Declaration are defined in Article I.
- B. The real property situated in Herriman City, Salt Lake County, Utah, described in Exhibit A, attached to and incorporated in this Declaration by reference (the "Parcel"), is hereby submitted, together with all buildings and improvements previously, now, or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, the "Property"), to a residential planned unit development consisting of residential Living Units and related Common Areas pursuant to Utah Code Ann. § 57-8a-101 et seq. that shall be known as The Towers (the "Project").
- C. Declarant is the owner of the Parcel subject to this Declaration.
- D. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein (collectively the "Restrictions"), which shall run with and be a burden upon the Property.
- E. Declarant desires to create an association of homeowners, which entity shall possess the power to maintain and administer the Common Areas, collect and disburse assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration.
- F. The Association is not a cooperative.
- G. Declarant intends that the Owners, Occupants, Mortgagees, and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of planned unit ownership for the Property, and for establishing Rules for the use, occupancy, management, and enjoyment thereof.
- H. Declarant explicitly reserves for itself the option in the future to expand the Project.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following covenants, conditions and restrictions. These covenants, conditions, and restrictions are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the recitals above

ARTICLE I. DEFINITIONS

1.1. **Act** shall mean and refer to the Utah Community Association Act, codified beginning at Section 57-8a-101, Utah Code Annotated, as the same may be amended from time to time.

1.2. **Additional Land** shall mean and refer to, without limitation, any part of the parcel of land more particularly described on Exhibit B attached hereto and incorporated herein by reference, all or a portion of which may be added to the Project in accordance with the provisions outlined in this Declaration.

1.3. **Architectural Review Committee** or **ARC** shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.

1.4. **Articles** shall mean and refer to the Articles of Incorporation for the Association, as amended and restated from time to time.

1.5. **Assessments** shall mean any charge imposed or levied by the Association against Owners including but not limited to annual assessments corresponding with the Common Expenses as well as special assessments, individual assessments, townhome assessments, late fees, and fines, all as provided in this Declaration.

1.6. **Association** shall mean and refer to the Towers Owners Association, Inc., a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association.

1.7. **Board** or **Board of Directors** shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association. The Board is the governing body of the Association.

1.8. **Bylaws** shall mean and refer to the Bylaws of the Association as the same may be amended from time to time.

1.9. **Common Areas** shall mean all roadway improvements within the Property shown on the Plat as private roads and which are not accepted for dedication by a municipal authority; all land, and the improvements situated thereon, within the Property that Declarant designates as Common Areas on the Plat or other recorded instrument and other real property which the Association now or hereafter owns in fee for the benefit of Owners for as long as the Association is the owner of the fee, which may include without obligation or limitation a clubhouse, tot lots, Association signs or monuments, walkways, trails and open space, landscaped areas outside of the Limited Common Areas, street signage, lighting detached from any Living Unit, sidewalks, and other similar improvements; and any real property or improvements within the Property that the Association has the obligation to maintain, repair, or replace for the common benefit of the Owners, as the Board shall determine in its sole and exclusive discretion, including, without limitation, all utility and service lines, systems and similar improvements, whether public or private-company owned, intended to serve more than one Living Unit, whether located on a Lot or lying outside of the exterior boundaries of the Living Unit.

1.10. **Common Expenses** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board of Directors; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act, this Declaration, the Bylaws, or the Rules.

1.11. **Declarant** shall mean and refer to Wasatch Land Company, a Utah corporation, and any successor in interest.

1.12. **Declaration** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Towers.

1.13. **Director** shall mean and refer to an individual member of the Board of Directors.

1.14. **Governing Documents** or **Project Documents** shall mean and refer to the Declaration, Articles of Incorporation, Bylaws, Plat, and any Rules adopted by the Board.

1.15. **Limited Common Areas** shall mean and refer to those Common Areas designated on the Plat as being reserved for the use and benefit of a designated Lot to

the exclusion of other Lot Owners. Whether or not indicated on the Plat, the Limited Common Areas include portions of the Common Areas bounded by approved fences on the townhome lots (53-197) and the driveways appurtenant to the townhome lots (53-197).

1.16. **Living Unit** shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence. The Living Unit shall include, without limitation, the roofs and all exterior surfaces, exterior trim, gutters, downspouts, and foundations. The Living Unit shall also include any mechanical equipment and appurtenances located within any one Living Unit, or located without said Living Unit but designed to serve only that Living Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Living Unit. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Living Unit or serving only the Living Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Living Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the building within which the Living Unit is located shall be deemed to be a part of the Living Unit.

1.17. **Lot** shall mean and refer to each of the individual lots within the Project, as shown on the Plat, with the exception of the Common Areas.

1.18. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Property.

1.19. **Member** shall mean and refer to a Lot Owner.

1.20. **Mortgage** shall mean any and refer to a mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.21. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.22. **Occupant** shall mean and refer to any Person, other than an Owner, living, dwelling, or staying in a Living Unit. This includes, but is not limited to, all lessees, tenants, and the family members, agents, and representatives living, dwelling, or staying in a Living Unit.

1.23. **Owner** or **Lot Owner** shall mean and refer to the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Property,

including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.24. **Parcel** as hereinbefore defined shall mean and refer to the real property legally described in Exhibit A.

1.25. **Party Wall** shall mean and refer to a wall, including without limitation a foundation wall, that forms part of a Living Unit and is located on or adjacent to a boundary line between two or more adjoining Lots owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Living Units, which wall may be separated by a sound board between two or more Living Units.

1.26. **Period of Declarant Control** shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (1) the date on which all of the Living Units have been conveyed to purchasers, including Living Units that may be included within the Additional Land, regardless of whether such Additional Land has been added hereto; or (2) the Declarant executes and records a written waiver of its right to control.

1.27. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.28. **Plat** shall mean and refer to the official subdivision plats of The Towers Subdivision, filed and recorded in the official records of the Salt Lake County Recorder's Office.

1.29. **Project** as hereinbefore defined shall at any point in time mean, refer to the The Towers planned unit development project.

1.30. **Property** as hereinbefore defined shall include the Parcel, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

1.31. **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.32. **Rules** shall mean and refer to the rules, resolutions, regulations, policies, etc. adopted by the Board.

1.33. **Supplemental Declaration** shall mean and refer to a written instrument recorded in the records of the Salt Lake County Recorder, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

ARTICLE II. PROPERTY DESCRIPTION

2.1. **Submission.** The Declarant hereby confirms that the Parcel described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant hereby declares that the Property and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, the Association, and each Owner, including their respective heirs, successors, and assigns.

2.2. **Name.** The Project, as submitted to the provisions of this Declaration, shall be known as The Towers, a planned unit development.

2.3. **Description of Improvements.** The improvements contained in the Project will be located upon the Parcel. The major improvements contained in the Project will initially include 52 single family home lots (lots 1-52) and 145 townhome lots (lots 53-197), each with a Living Unit. Other Lots or Common Area upon the Additional Land may be added as reserved by the Declarant. There are also Common Areas as further provided herein, along with other improvements detailed on the Plat. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements on the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.

2.4. **Common Areas.** The Common Areas of the Project shall be as defined in Article 1, Section 1.9 above.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot and Living Unit in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot and Living Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot and Living Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his Lot and Living Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2. **Voting Rights.** Except as otherwise disallowed in this Declaration or the Bylaws or limited by the Special Declarant Rights reserved by the Declarant, Owners

shall be entitled to one (1) vote per Lot owned. Voting is limited to one (1) vote per Lot.

3.3. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose other than to determine whether a quorum exists.

3.4. **Record of Ownership** Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot. Each Owner shall file a copy of such conveyance documents (or contract) with the secretary of the Association who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgagee which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an "Individual Assessment" in accordance with the provisions of Section 5.6.

3.5. **Proxies.** An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser or his Lot to vote on all matters coming before the Association for vote provided the same is in writing, authenticated by witnesses or a notary public, and is presented to those Association officers conducting such vote.

ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS

4.1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Member's Lot. This right of easement shall only extend to the Limited Common Area appurtenant to the Living Unit and not to other Limited Common Areas.

4.2. **Title to Common Areas.** The Declarant has or will convey title to the Association on various Common Areas; however, neither this conveyance nor any other

provision of the Declaration shall be construed to create a contractual relationship between the Association and Declarant.

4.3. **Limitation on Easement.** A Member's right and easement for the use and enjoyment of the Common Areas shall be subject to the following:

1) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

2) The right of the Association to charge reasonable admission and other fees for the use of the recreational facilities situated upon the Common Areas;

3) The right of Salt Lake County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service;

4) The right of the Association to suspend voting rights and right to use the Common Areas by an Owner for any period during which any Assessments against his Lot remain unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rule;

5) The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the Lot Owners.

4.4. **Delegation of Use.** Any Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside on the Property. The rights and privileges of such delegee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in above Section.

4.5. **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner and Occupant shall fully and faithfully comply with the Rules.

ARTICLE V. BUDGET AND ASSESSMENTS

5.1. **Annual Budget.** The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted.

5.2. **Covenant to Pay Assessments.** Each Owner of a Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association all Assessments, including without limitation, all Annual, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as may be provided in this Declaration and the Rules.

5.3. **Purpose of Assessments.** Assessments levied by the Association shall be used for the purpose of promoting the health, safety, and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to, payment of the cost of taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.

5.4. **Declarant's Covenant for Assessments.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lot or Living Unit owned by it until such time as the earlier of the following two events occurs: (1) certificates of permanent occupancy are issued on a Living Unit, and the Living Unit is sold or rented by Declarant; or (2) Declarant elects in writing to pay the Assessments, whichever first occurs.

5.5. **Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly or quarterly installments on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

5.6. **Special Assessments.** In addition to the Annual Assessments, the Board may levy in any calendar year a Special Assessment up to one-thousand dollars (\$1,000), payable over such a period as the Board may determine for the purpose of

defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Additional Special Assessments over one-thousand dollars (\$1,000) in a calendar year may be levied if assented to by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

5.7. **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Project Documents against the Owner or his/her Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Project Documents or by the Board, including, without limitation, action taken to bring a Unit and its Owner into compliance with the Project Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorneys' fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration. In addition, Individual Assessments may be levied against a Lot and its Owner specifically benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Lot Owner's or his/her Occupants' negligence.

5.8. **Allocation of Assessments.** Except for Individual Assessments, Annual and Special Assessments shall be fixed at a uniform rate for all Lots.

5.9. **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board shall be binding

and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

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

5.11. **Certificate Regarding Payment.** Upon the request of any Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot a reasonable fee of up to twenty-five dollars (\$25) or an amount greater if so provided in the Act.

5.12. **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorneys' fees if collection efforts become necessary shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.13. **Rules Regarding Billing and Collection Procedures.** The Board of Directors shall have the right to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such

notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident at the Project.

5.14. **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board of Directors may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

5.15. **Collection Charge.** If any Assessment is delinquent, the Owner may be obligated to pay interest at the rate of eighteen percent (18%) per annum, in addition to a collection charge and/or such other late fee penalty established by the Board. Until paid, such collection charge, interest, and/or late fees shall constitute part of the Assessment lien provided above. Late fees may be assessed each month until the delinquent Assessment, including all of its accompanying charges, costs, and attorneys' fees, is paid in full.

5.16. **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Assessments:

- 1) The Association may suspend such Owner's voting rights.
- 2) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Salt Lake County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorneys' fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.
- 3) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against the Lot Owner without foreclosing or waiving the lien described above. Recovery on any

such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

4) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

5) The Association may terminate utilities paid out of the Common Expense and the right to use the Common Areas.

6) Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

7) The Association shall have any other remedy available to it whether provided in the Project Documents, the Act, or other law or in equity.

5.17 **Power of Sale.** The Owners hereby convey and warrant pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-302 to the Association's attorney of record, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of Assessments under the terms of the Declaration;

5.18. **Reserve Account.** The Board shall establish a reserve account to fund long-term maintenance of Common Areas. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve Account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board during the Period of Declarant Control.

5.19. **Reimbursement of Tax Collection by County Authorized.** It is recognized that under the Declaration that the Association will own the Common Areas, which may obligate it to pay property taxes to Salt Lake County to the extent taxes are required on such Common Areas. Each Owner will be required to reimburse the Association for its pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Salt Lake County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

5.20. **Reinvestment Fee.** Subject to the terms and conditions of this Section, the Board shall have the right to establish from time to time (but shall not be required to

establish) a Reinvestment Fee assessment in accordance with this Section. If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

1) Upon the occurrence of any sale, transfer, or conveyance of any Living Unit (as applicable, a "Transfer"), but excluding the initial sale or Transfer by or to Declarant or an affiliate or successor of Declarant, the party receiving title to the Living Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board from time to time, provided that in no event shall the Reinvestment Fee exceed the lesser of (i) 0.5% of the value of the applicable Living Unit, or (ii) the maximum rate permitted by applicable law.

2) Notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

a) Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.

b) Any Transfer to the Association or its successors.

c) Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Living Unit transferred.

d) Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution, except for a sale of the Living Unit by the estate of an Owner.

e) Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously recorded, removing clouds on titles.

f) Any lease of any Living Unit or portion thereof for a period of less than thirty (30) years.

g) Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

h) Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

3) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

ARTICLE VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1. **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board of Directors.

6.2. **Legal Organization.** The Association is a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

6.3. **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties, and obligations:

- 1) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation;
- 2) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- 3) The powers, duties, and obligations of a homeowners association pursuant to the Utah Community Association Act, or any successor thereto;
- 4) The powers, duties, and obligations not reserved specifically to the Lot Owners; and
- 5) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association

pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

6.4. **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

1) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.

2) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

3) **Rulemaking.** The Association, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Property.

4) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.

5) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association.

6) **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by its developer and pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

7) **Employment of Agents, Advisers, and Contractors.** The Association, through its Board, may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and

obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Property. Any agreement with a Manager shall not exceed a term of two (2) years, renewable by agreement of the parties for a successive two (2) year term, and shall be terminable by the Association upon no more than sixty (60) advanced notice.

8) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other Common Law or statutory right which the Association is granted. The Association shall not commence any litigation without prior approval of the majority of the Members, if the litigation shall exceed the cost of five thousand dollars (\$5,000.00) either in attorney fee expenses or in costs (including any expert reports).

9) **Shared Use of Open Space.** Declarant has reserved the right to add as Additional Land, including without limitation the property described in Exhibit B hereto. In the event the property described as Phase 5 in Exhibit B is added as open space, the Association shall grant the owner of the adjoining apartment project immediately west of the Additional Land a permanent and nonexclusive easement over and across any open space common areas on the Additional Land for recreational purposes. The easement for recreational use is granted by the Association as a benefit and right appurtenant to the adjoining apartment owner. The recreational easement is granted for the right, benefit and use of the adjoining apartment owner, and the apartment owner's successors, heirs, assigns, lessees, tenants, and residents, subject to provisions of this Declaration and a Joint Use Agreement that may be recorded against both parcels, setting forth additional terms of use and cost sharing obligations.

6.5. **Liability.** A member of the Board or an officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful bad acts or acts of recklessness. In the event any Board member or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board member or officer is found by a court of law to have acted recklessly, wilfully, or intentionally in carrying out his/her duties.

6.6. **Board of Directors.** The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board of Directors shall act in all instances on behalf of the Association. Without limiting the generality of the foregoing, the Board may appoint one or more "Committees", and such Committees (which may consist of one or more members,

as determined by the Board) shall have such authority and duties as may be determined from time to time by the Board relating to the budgeting, operation, financial management and administration of the Project (collectively, the "Delegated Duties"). While any Committee established by the Board shall report to the Board regularly regarding its activities, the Board may by express directive relinquish and transfer all authority and responsibility with respect to such Delegated Duties to an applicable Committee.

6.7. **Dispute Resolution.** Declarant, Association, its officers and directors, and all Owners (each a "Bound Party" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the design, initial construction, condition, or sale of any part of the Project or any improvements thereon ("Claims") involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

- (a) Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually referred to as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), stating plainly and concisely:
 - i. The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
 - ii. The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
 - iii. The proposed remedy; and
 - iv. The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.
 - v. That the person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the claim.
- (b) Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (c) In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the parties; or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the

Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with legal proceedings against the Respondent following one hundred eight (180) days of the original notice.

- (d) Before initiating any legal proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:
 - i. Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
 - ii. Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least 72 hours notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting;
 - iii. Receive approval from two-thirds vote of the entire voting interest of the Association, who must be present in person or by proxy at the special meeting, to initiate any legal proceeding of the Claim against the Declarant and/or its affiliate, if applicable.
- (e) Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorneys fees and costs expended as a result of enforcing this Section 6.7, which fees and costs may include, without limitation, pre-litigation attorneys fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, and may result in damages to Declarant including lost revenues, and loss of business and sales opportunities.
- (f) Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any Proceeding, (2) any

institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Board who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written approval of both: (a) Members representing not less than sixty-seven percent (67%) of the total voting power of the Association, and (b) not less than seventy-five percent (75%) of the total voting power of the Board; and any purported amendment or deletion of this Section or any portion hereof, without both of such express prior written approvals shall be void.

- (g) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

ARTICLE VII. MAINTENANCE

7.1. **Maintenance.** The Association shall maintain, repair, and replace all Common Areas, including the streets, roadways, parking areas, clubhouse, tot lots, open space outside the lots, and common landscaped areas surrounding lots 53-197 together with all improvements thereon and all easements appurtenant to the Common Area and Limited Common Area including but not limited to private utility lines serving more than one Living Unit, landscape and drainage easements and personal property owned by the Association when the context so requires, all of which are not included within the dimensions of any Lot.

The Common Areas shall be maintained in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Association shall have no obligation to perform any exterior maintenance and/or repair of any part of a Lot, Living Unit, the Limited Common Area, or any other landscaping installed by an Owner without the Association's express agreement to maintain such landscaping.

7.2. **Services.** The Association shall provide or contract for such services as the Board of Directors may reasonably deem to be of benefit to the Property, including, without limitation, garbage/trash removal services for all Living Units.

7.3. **Living Unit, Lot, and Limited Common Area, Maintenance.** Each Owner shall have the obligation to provide exterior and interior maintenance of the Lot and Living Unit, and the Limited Common Areas serving his respective Lot and Living Unit, including but not limited to painting, repair, replacement, and care of roofs, gutters, down spouts, exterior building surfaces, driveways, structural elements of the Lot and Living Unit, foundations, windows, doors, utility lines that solely service the Lot or Living Unit. The responsibility and cost to maintain, repair and replace, shared roofs shall be borne equally by the Lots Owners benefited thereby. As necessary or desirable, each Owner shall paint, repair, and otherwise maintain the exterior and interior of his Living Unit and shall maintain, repair, and replace all mechanical devices, including but not limited to, appurtenant electrical, plumbing, and heating, ventilating and air conditioning systems.

Notwithstanding the foregoing the Association shall be responsible to maintain the landscaped areas of the Limited Common Area surrounding the townhomes Lots 53 – 197 as included in the original construction of the Project. The Association shall not be responsible to maintain any approved landscaping not included within the original construction of the Project, except at the discretion or approval of the Board.

Lot Owners shall be responsible to maintain, repair, and replace any non-perimeter fences which mark the boundaries of the Limited Common Areas serving their respective Lots. Such fences may be included as part of the original construction. In the event, the backyard Limited Common Area is not fully enclosed upon initial construction, the Association may grant permission for a Lot Owner to fully enclose the such area with approved fencing; but, such approval must be made in writing at the discretion of the Board. No approval to fully enclose the Limited Common Area shall be granted unless the Lot Owner agrees to cover the cost of construction and any necessary alterations to the existing area, as the board so determines; and, includes a gate to enable the Association to maintain landscaped areas within the bounded area as provided herein. In the event a Lot Owner fails to provide unrestricted access to the landscaped area within an enclosed Limited Common Area, the Association shall have no obligation to maintain, repair, or replace such areas while access is restricted, or to maintain, repair, or replace landscaping, irrigation systems, or any other unmaintained or damaged property arising out of or resulting from the Lot Owner's failure to provide unrestricted access.

The cost and responsibility to maintain, repair, and replace any portion of such non-perimeter fence, which serves, benefits, or bounds only one Lot or backyard Limited Common Area shall be borne exclusively by the Lot Owner bounded thereby.

When such non-perimeter fences serve, benefit, or otherwise mark a boundary of two or more Lots or backyard Limited Common Area, the responsibility and cost to maintain, repair, and replace the shared portion of such fences shall be borne equally by all Lot Owners of backyard Limited Common Areas bounded thereby.

7.4. **Party Wall Maintenance.** By acceptance of a deed to a Lot, each Owner hereby acknowledges, agrees, and understands that it is essential that the Party Wall (as defined above) be maintained in good condition and repair to preserve the integrity of the Living Units as they are used and occupied by Owners. Each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the Party Wall. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owners' respective Living Unit. With respect to pipes, conduits, ducts, and other utility service lines and connections which benefit only one or more, but fewer than all, of the Owners, the Owner(s) benefited solely thereby shall be fully and personally responsible for the cost of maintaining such items in good condition and repair, including the making of replacements as needed. In the event that the need for maintenance or repair of the Party Wall is caused through the willful or negligent act of any Owner or his/her Occupant, the cost of such maintenance or repairs shall be the sole and exclusive expense of such Owner. With respect to structural components of the Party Wall, except as may be otherwise provided in the immediately preceding sentences, the Owners benefitted by the Party Wall agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary.

7.5. **Owner Maintenance Neglect.** The Association shall have the power and authority without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon (including a Living Unit); but only if the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration or any Rules of the Association. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein.

The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoy any breach or threatened breach of this Declaration or any Rules promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such Rules.

7.6. **Maintenance Caused by Owner Negligence.** In the event that the need for maintenance or repair of Common Areas as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth above) to which such Lot is subject.

ARTICLE VIII. INSURANCE

8.1. **Insurance.** The Board of Directors shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

8.2. **Property Insurance.**

1) **Hazard Insurance.** *With respect to the townhome lots 53-197 only*, the Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Living Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

a) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Living Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Living Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

b) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

c) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Living Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

d) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost;

and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

e) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

2) **Owner Responsibility for Payment of Deductible.** If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

a) The Association's policy provides primary insurance coverage, and:

i) the Owner is responsible for the Association's policy deductible; and

ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

b) An Owner that has suffered damage to any combination of a Living Unit or a Limited Common Area appurtenant to a Living Unit ("Living Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Living Unit Damage ("Living Unit Damage Percentage") for that Living Unit to the amount of the deductible under the Association's property insurance policy; and

c) If an Owner does not pay the amount required under Subsection b) above within 30 days after substantial completion of the repairs to, as applicable, the Living Unit or the Limited Common Area appurtenant to the Living Unit, the Association may levy an assessment against the Owner for that amount.

3) **Association's Obligation to Segregate Property Insurance Deductible.** The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

4) **Association's Right to Not Tender Claims that are Under the Deductible.** If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

5) **Notice Requirement for Deductible.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

6) With respect to Lots 1-52, the Association shall have no obligation to obtain or maintain any insurance covering the personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

8.3. **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

8.4. **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers,

and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Project's Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

8.5. **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board of Directors members of the Association, (b) employees and volunteers of the Association, (c) any manager of the Association, (c) officers, directors, and employees of any manager of the Association, and (d) coverage for acts.

8.6. **Worker's Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board of Directors deems appropriate.

8.7. **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Mortgagee.

8.8. **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

8.9. **Association has the Right to Negotiate All Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners

and lien holders, as their interests remain with regard to the Living Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

8.10. **Insurance Trustee.** In the discretion of the Board of Directors or upon written request executed by Owners holding at least 50% of the entire voting interest of the Association, the Board of Directors shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board of Directors (as the case may be) shall require.

8.11. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

8.12. **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

8.13. **Annual Insurance Report.** Not later than sixty (60) days prior to the beginning of each fiscal year, Board of Directors may obtain a written report by a reputable insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association) setting forth the existing insurance obtained pursuant to the Declaration and stating whether in the opinion of such broker or consultant, the insurance complies with the requirements of the Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar projects. The Board of Directors shall be protected in relying on the written report furnished pursuant to this Subsection provided reasonable care and prudence were exercised in selecting such insurance broker, agent, or consultant. The most recent annual insurance report shall be made available to all Lenders and Owners upon request.

ARTICLE IX. USE RESTRICTIONS

9.1. **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.

9.2. **Use of Lots and Living Units.** All Lots are intended to be improved with Living Units and are restricted to such use. Except as may be approved to the contrary, each Living Unit shall be used only as a single-family Living Unit. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any Lot or Living Unit without the prior written consent of the Board and applicable governmental entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable local ordinances. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in any way which would result in an increase in the cost of any insurance covering the Common Areas.

9.3. **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, Living Unit, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, Living Units, or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.

9.4. **Recreational Vehicles.** No boats, trailers, motorhomes, large trucks, commercial vehicles, or the like belonging to Owners or other residents of the Property shall be parked within the Development, not to exceed forty-eight (48) hours. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any Lot, Private Street or other Common Areas, except for emergency repairs to vehicles. Any motor recreational vehicle must be kept in an enclosed garage.

9.5. **Pets.** No animals shall be kept in the Project except household pets. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor, or unsanitary conditions. No savage or dangerous animals shall be kept. No pets shall be permitted to run loose upon the Common Areas. In addition to the restrictions set forth

in this section 9.5, the Board shall be authorized to adopt and implement reasonable Rules pertaining to pets and animals.

9.6. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Living Unit or appurtenant structures.

9.7. **Nuisances.** No resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes but is not limited to the following:

- 1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
- 2) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- 3) The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Board or the Association;
- 4) The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
- 5) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;
- 6) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invites, particularly if the police or sheriff must be called to restore order;
- 7) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invites;

8) Too much noise in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m., or use of outside speakers or amplifiers;

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

10) Allowing a pet to be unleashed while outside of the Living Unit or fenced backyard;

11) Continuous barking, meowing, or other animal noises;

12) Allowing a pet to urinate or defecate in the Common Areas or failing to clean up immediately any feces deposited by a pet in the Common Area.

9.8. **Signs.** No signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except as approved by the Board.

9.9. **Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained as not to be visible from the street view except to make them available for collection and then only for the shortest time necessary to effect such collection. The Association shall provide garbage cans and waste removal services.

9.10. **Smoke and Carbon Monoxide Detectors.** Each Living Unit shall have an operable carbon monoxide detector and smoke detectors as required by building code. The Board may, but is not required to, enter a Living Unit to ensure that it is in compliance with this Section.

9.11. **Living Unit Heating.** Owners shall heat Living Units to no less than fifty-degrees (50° F) at all times to prevent pipes from freezing.

9.12. **Parking.** Only temporary guest and visitor parking is allowed on roadways or streets within the Project boundaries. This prohibition on parking on roadways and streets is for all vehicles, including but not limited to, automobiles, trucks, buses, tractors, camping vehicles, boats, bus trailers, snowmobiles, mobile homes, two, three or four wheeled motor vehicles, or other wheeled vehicles. Furthermore, the Board of Directors is authorized to adopt and implement reasonable Rules pertaining to parking within the Project boundaries. The Board of Directors may hire at their discretion a third party parking enforcement company to enforce any Rules.

9.13. **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture and portable barbecue grills in good condition which may be maintained on backyard

patios. Said patio furniture shall conform with standards set by the Architectural Committee.

9.14. **Window Coverings.** Every Owner of a Living Unit shall be obligated to ensure that window coverings are installed within the Living Unit within one month of purchasing or taking possession of the Living Unit. Furthermore, the Board of Directors is authorized to adopt and implement reasonable Rules pertaining to the type, color, material, etc. of window coverings.

9.15 **Leases.** The leasing of Living Units is permitted. Any agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "lease") shall be in writing, a copy of which shall be provided to the Board along with the name and contact information for all adult tenants, vehicle information of the tenants, and any other information deemed necessary by the Board. No Owner shall be permitted to lease his/her Living Unit for transient, hotel, or seasonal purposes. All leases shall be for an initial term of no less than six (6) months. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his or her entire Living Unit. All leases shall provide that the tenant is subject to and shall abide by the Project Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within ten (10) days after delivery of written notice of the creation of a nuisance or violation of the Project Documents, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. In the event that the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so.

ARTICLE X. ARCHITECTURAL CONTROLS

10.1. **Architectural Control Committee.** The Board may appoint a three (3) member Architectural Control Committee, the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures (herein the "Committee"). The Committee need not be composed of Owners. If such a Committee is not appointed, the Board shall perform the duties required of the Committee.

10.2. **Architectural Controls.** To maintain a degree of protection to the investment which homeowners in this area may make, homes of superior design are requisite, and designs shall be limited to those approved by the Committee. In the event of any reconstruction of an improvement or a residential Living Unit due to a casualty, the design, quality, and appearance of the reconstructed home shall be substantially the same as the structure initially built, unless otherwise approved by the Committee. No landscaping, grading, excavation, building, fence, wall, residence, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or

made until the construction plans and specifications, have been approved in writing by the Committee. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme, and all changes in the grade within the Project, shall be subject to the prior written approval of the Committee. Once approved by the Committee, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the Committee. Subsequent to receiving approval of the Committee and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit from Herriman City.

No construction, reconstruction or modification of a home or landscaping may commence without approval by the Committee of the working drawings including, but not limited to, the following:

- 1) Plot plans to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property line and street fronts and elevations of floors from a designated point on the street.
- 2) Detailed floor plans showing dimensions and measurements.
- 3) Detailed elevations, indicating all materials and colors and showing existing and finished grades.
- 4) Detailed sections, cross and longitudinal.
- 5) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

Specifications shall give complete descriptions and color samples of materials to be used on the exterior of the residence. The Committee will base its approval of construction plans, specifications, landscaping plans, and other alterations upon compliance with the Design Guidelines, any other design guidelines adopted by the Association, and other provisions found within the Project Plan.

10.3. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Living Units, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant and/or other persons engaged in the construction of residences within the Project so long as the location of such model homes and the opening and closing hours are

approved by the Committee, and the construction, operation and maintenance of such model homes otherwise complies with all of the provisions of this Declaration. The Committee may also permit Living Units and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of Herriman City and any rules of the Committee. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of residences within the Project, and no home shall be used as a model home for the sale of homes not located within the Project.

10.4. **Liability for Damages.** The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it made pursuant to this Article X.

ARTICLE XI. ENFORCEMENT

The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto. The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorneys' fees.

ARTICLE XII. SPECIAL DECLARANT RIGHTS

12.1 **Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- 1) Any improvements shown on the Plat;
- 2) Any Lots and corresponding Living Units upon all or any portion of the Additional Land, and subject to the requirements of Section 12.2, the addition of the same to the Project; and
- 3) Any other buildings, structures, or improvements that Declarant desires to construct on the Parcel, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

12.2 **Expandable Project.** The Declarant herewith expressly reserves the right and option to expand the Project by the addition of Additional Land, or portions thereof,

and Lots and Living Units to be constructed thereon, all in accordance with the provision of this Section.

1) The Project may be expanded by the addition of all or a portion of the real property designated on Exhibit "B" attached hereto and incorporated herein by reference, such real property or portions thereof where applicable being referred to as "Additional Land".

2) Expansion of the Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Owner.

3) Declarant's right to expand the Project as provided in this Section shall not expire until the Declarant elects in writing to not add the Additional Land to the Project.

4) The Additional Land designated on Exhibit "B" attached hereto and incorporated herein by reference, may be added in total or in part, and in any order as Declarant may determine. Such Additional Land (or any portion thereof) may be added at any time within the period allowed for expansion of the Project.

5) All improvements upon Additional Land shall be made in such a manner as to conform to all governmental regulations appertaining thereto, but such improvements may be located upon the Additional Land, or any portion thereof, in such manner as the Declarant deems appropriate in its sole discretion, subject to the requirements contained herein. All of the additional Lots and Living Units to be constructed upon Additional Land will be constructed for or are to be designated exclusively for residential use.

6) All improvements erected upon any Additional Land added to the Project will be compatible with the Living Units and improvements then upon or to be constructed upon the Property, all such additional Living Units and improvements to be approximately equal to or better in terms of quality of construction and materials to be used. Notwithstanding the above, no assurances can be made by the Declarant in every instance that such structures and improvements will be identical in all regards.

7) Declarant consents and agrees that any Lot and Living Unit constructed within the Project and upon Additional Land will be similar in all material respects to the Living Units presently contained or to be constructed upon the Property and shown on the Plat.

8) The Declarant simultaneously with the submission of Additional Land to the Project shall prepare and record in the Salt Lake County records, a

supplemental Plat pertaining to such Additional Land to be added showing the location and dimensions of each Lot and Living Unit created from and located upon such Additional Land, and the Living Unit designation of each Living Unit so created.

9) Simultaneously with the recording of said supplemental Plat, the Declarant shall duly execute, acknowledge, and record a Supplemental Declaration setting forth that an expansion of the Project has occurred. Such Supplemental Declaration shall include, in addition to any requirements of the Act, the following: (i) if now shown on the supplemental Plat, a legal description of the Additional Land added to the Project; (ii) the designation of each Lot and Living Unit created from and included within the Additional Land.

12.3. Other Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law:

1) the right to maintain sales offices, model Living Units, and signs advertising the Project or any Living Unit at any location in the Project;

2) the right to use easements through the Common Areas as set forth in this Declaration;

3) the exclusive right to appoint or remove members of the Board during the Period of Declarant Control;

4) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents.

5) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

12.4. Exercising Special Declarant Rights. Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Property, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

12.5. **Interference with Special Declarant Rights.** Neither the Association nor any Owner may take any action or adopt any Rules that interferes with or diminishes any Special Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

12.6. **Limitation on Improvements by Association.** Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.

12.7. **Transfer of Special Declarant Rights.** The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person. Such transfer, conveyance, or assignment shall be effective upon recording in the office of the Salt Lake County Recorder.

12.8. **Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot and Living Unit prior to the contracting for the conveyance of the Living Unit to a purchaser.

12.9. **Easements Reserved to Declarant.**

1) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

2) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

3) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which

openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

4) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.

5) The Declarant reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Declarant.

6) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

ARTICLE XIII. RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything contrary contained herein, the following provisions apply:

13.1. **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for Assessments levied while it holds title to the Lot.

13.2. **Notice of Default by Lot Owner.** In the event an Owner neglects for a period of sixty (60) days or more to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.

13.3. **Abandonment, Termination, Etc.** Unless all of the holders of first Mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission, or otherwise to abandon or terminate the Project.

13.4. **No Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

ARTICLE XIV. RIGHT OF ENTRY

The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice of at least 48 hours to enter upon or into any Lot or Living Unit, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs or correct any violation of any of the Declaration or Rules, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by a lien provided in Article V. Notice shall not be necessary in case of an emergency originating in or threatening such Living Unit or any other part of the Project, including the sound or sight of running water in a Living Unit, the smell or sight of smoke in a Living Unit, abnormal or excessive noises; and foul smell. Owners shall also maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Living Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from recklessness or bad faith.

ARTICLE XV. AMENDMENTS

General Amendment Requirements.

1) **Amendments by Declarant.** Until after the termination of the Period of Declarant Control, the Declaration and the Plat may be amended by the Declarant without any additional approval required. In addition, during the Period of Declarant Control no other amendment shall be valid or enforceable without the Declarant's prior written consent.

2) **Amendments by Association.** After termination of the Period of Declarant Control, amendments to this Declaration shall be proposed by either a

majority of the Board or by Owners holding at least forty percent (40%) of the voting interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Except as otherwise provided herein, this Declaration may only be amended upon the affirmative vote of at least sixty-seven percent (67%) of the voting interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Salt Lake County, State of Utah. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature shall be required.

ARTICLE XVI. MISCELLANEOUS

15.1. **Notices.** Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no mailing address has been provided, the Lot owned by said Owner shall be used for notice purposes.

15.2. **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in the Association. The following additional provisions shall govern any application of this Section:

- 1) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.
- 2) The total number of votes required for authorization or approval under this Section shall be determined as of the date on which the last consent is signed.
- 3) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

15.3. **Dissolution.** Subject to the restrictions set forth in Article XIII of this Declaration pertaining to Mortgagee protection, the Association may be dissolved by the affirmative assent in writing from 90% of the Lot Owners. Upon dissolution of the Association, all of its agency or authority to be used for purposes similar to those provided for in the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in Article V of this Declaration.

15.4. **Interpretation and Severability.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

15.5. **Covenants to Run with Land.** This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

15.6. **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

15.7. **Security.** The Declarant or Association shall in no way be considered an insurer or guarantor of security within or relating to the Property, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Lot in this Association that Association, Declarant, and the Board are not insurers of the safety or well-being of Owners or Occupants or of their

personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, DECLARANT, AND THE BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE TOWNHOME PROJECT.

15.8. **Effective Date.** The Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

[Certification on Next Page]

Exhibit A

LEGAL DESCRIPTION

The Towers Phase 1

A parcel of land located in the Southeast Quarter of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian described as follows:

Beginning North 00° 32' 22" East 1388.00 feet along the Section Line from the Southeast Quarter Corner of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence North 89° 38' 33" West 1035.00 feet; thence North 00° 32' 17" East 1262.97 feet to the quarter section line; thence South 89° 37' 15" East 575.04 feet along the quarter section line; thence South 00° 21' 27" West 149.39 feet; thence North 89° 44' 44" West 4.96 feet; thence South 00° 15' 16" West 95.00 feet; thence North 89° 44' 44" West 277.23 feet; thence South 00° 15' 16" West 130.00 feet; thence North 89° 44' 44" West 29.71 feet; thence South 00° 15' 16" West 83.50 feet; thence South 89° 44' 44" East 23.79 feet; thence South 00° 15' 16" West 118.50 feet; thence North 89° 44' 44" West 24.48 feet; thence South 00° 15' 16" West 83.74 feet; thence North 89° 56' 40" East 25.51 feet; thence South 00° 15' 16" West 118.88 feet; thence South 00° 15' 56" West 83.94 feet; thence South 89° 44' 44" East 743.06 feet to the section line; thence South 00° 32' 22" West 400.75 feet along the section line to the point of beginning.

Towers
Phase 1
Lots

- 1 26-36-427-016
- 2 26-36-427-015
- 3 26-36-427-014
- 4 26-36-427-013
- 5 26-36-427-012
- 6 26-36-427-011
- 7 26-36-427-010
- 8 26-36-427-009
- 9 26-36-427-001
- 10 26-36-427-002
- 11 26-36-427-003
- 12 26-36-427-004
- 13 26-36-427-005
- 14 26-36-427-006
- 15 26-36-427-007
- 16 26-36-427-008
- 17 26-36-426-007
- 32 26-36-428-009
- 33 26-36-428-008
- 34 26-36-428-007
- 35 26-36-428-006
- 36 26-36-428-005
- 37 26-36-428-004
- 38 26-36-428-003
- 39 26-36-428-002
- 40 26-36-428-010
- 41 26-36-428-011
- 42 26-36-428-012

Units

- 1 26-36-429-010
- 2 26-36-429-009
- 3 26-36-429-008
- 4 26-36-429-007
- 5 26-36-429-006
- 6 26-36-429-005
- 7 26-36-429-004
- 8 26-36-429-003
- 9 26-36-429-002
- 10 26-36-429-001
- 11 26-36-428-013
- 12 26-36-428-014
- 13 26-36-428-015
- 14 26-36-428-013

49 26-36-428-021
50 26-36-428-020
51 26-36-428-019
52 26-36-428-018
53 26-36-428-017
54 26-36-428-022
55 26-36-428-023
56 26-36-428-024
57 26-36-428-025
100 26-36-428-030
101 26-36-428-029
102 26-36-428-028
103 26-36-428-027
104 26-36-428-026
105 26-36-428-031
106 26-36-428-032
107 26-36-428-033
108 26-36-428-034
109 26-36-428-035

Proposed Phase 2 26-36-426-002

Exhibit "B"

LEGAL DESCRIPTION FOR A PORTION OF THE ADDITIONAL LAND

A parcel of land located in the Southeast Quarter of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian described as follows:

Beginning North 00° 32' 22" East 2209.22 feet along the section line and North 89° 27' 38" West 168.60 feet from the Southeast Quarter Corner of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence South 78° 30' 47" West 80.45 feet; thence North 89° 44' 44" West 522.59 feet to the east line of The Towers Phase 1 and running along said east line the following 7 courses: thence North 00° 15' 16" East 83.50 feet, thence South 89° 44' 44" East 29.71 feet, thence North 00° 15' 16" East 130.00 feet, thence South 89° 44' 44" East 277.23 feet, thence North 00° 15' 16" East 95.00 feet, thence South 89° 44' 44" East 4.96 feet, thence North 00° 21' 27" East 149.39 feet to the quarter section line; thence South 89° 37' 15" East 296.05 feet along the quarter section line; thence South 07° 18' 40" East 211.87 feet; thence South 11° 29' 13" East 136.71 feet; thence South 78° 30' 47" West 81.00 feet; thence South 11° 29' 13" East 82.24 feet to the point of beginning.

(Proposed Towers Phase 2)

26-36-426-002