



When recorded return to
Judd Palmer
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St. George, Utah 84790

**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS
FOR
RIVERSIDE TOWERS COMMERCIAL CONDOMINIUMS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for RIVERSIDE TOWERS COMMERCIAL CONDOMINIUMS, is made and entered into the 20 day of May, 2008, by RIVERSIDE TOWERS, LLC a Utah limited liability company, herein referred to as "Declarant". This Declaration is made in contemplation of the following facts and circumstances.

A. Declarant is the fee simple owner of certain real property located in Washington County, State of Utah, and more particularly described as follows:

Tax ID# SG-5-2-31-3213

Beginning at a point North 89°05'44" West, 535.26 feet along the Section line and North 1196.60 feet from the South Quarter Corner of Section 31, Township 42 South, Range 15 West, Salt Lake Base and Meridian, and running thence North 01°52'09" East, 225.02 feet; thence South 88°40'22" East, 357.62 feet; thence South 01°22'53" West, 180.85 feet to a point on a reverse curve to the left, the radius point of which is South 24°05'28" West, 75.00 feet; thence Westerly and Southerly 122.12 feet along the arc of said curve; thence North 88°40'22" West, 259.84 feet to the point of beginning.

(Proposed "RIVERSIDE TOWERS, LLC. COMMERCIAL CONDOMINIUMS")

B. This Declaration is being imposed by Declarant upon the Property,

C. Declarant desires to create within and upon the Property a business, professional and commercial complex in an attractive setting to be known as RIVERSIDE TOWERS (hereafter may be referred to as the "Project"). In order to do so, Declarant desires to establish covenants, conditions and restrictions upon the Property and each and every portion thereof, which will constitute a general scheme for the improvement, development and management of said Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of the business environment within the Project.

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

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold, conveyed, transferred, leased, used and occupied subject to the easements, covenants, conditions and restrictions set forth herein and which shall run with the Property and all portions thereof and shall be binding upon all parties having or acquiring any right, title or interest in and to all or any portion of the Property, and the respective heirs, successors and assigns of such parties.

ARTICLE 1 DEFINITIONS

Unless the context clearly indicates otherwise, certain term used in this Declaration shall have the meanings set forth in this Article 1. In this Declaration, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

- 1.1 Architectural Control Committee ("ACC") means the committee provided for in Article 3 below.
- 1.2 Building means any structure that (i) is permanently affixed to the Property, and (b) has one or more floors and a roof.
- 1.3 City means the City of St. George, a municipal corporation of the State of Utah.
- 1.4 Declarant means Riverside Towers, LLC, a Utah limited liability company and its successors and assigns.
- 1.5 Declaration means this Declaration of Covenants, Conditions and Restrictions for Riverside Towers Commercial condominiums and any amendments or supplements thereto.
- 1.6 Design Guidelines mean the guidelines prepared by Declarant setting forth architectural standards and specifications regarding the location and design of any Improvements, construction materials, lighting, landscaping, signage and other matters relating to Improvements on the Property. All current and approved Design Guidelines may be amended from time to time, and are incorporated in this Declaration by reference. Copies of the Design Guidelines will be provided by the ACC.
- 1.7 Easement(s) means any easement and/or all easements (a) granted pursuant to the provisions of this Declaration, (b) set forth in the final Plat recorded with regard to the Property, or (c) to which the Property is subject pursuant to documents which have been or will be recorded with the Washington County Recorder, State of Utah.
- 1.8 Environmental Regulations have the meaning set forth in Section 1.10 herein.
- 1.9 Hazardous Condition has the meaning set forth in Section 5.10(a) hereof.
- 1.10 Hazardous Material means (a) any waste, material or substance (whether in the form of a liquid, a solid or a gas and whether or not air-borne), which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to

public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated pursuant thereto (collectively "Environmental Regulations") and individually, an "Environmental Regulation"; (b) petroleum; (c) asbestos; (d) polychlorinated biphenyls; and (3) any radioactive material. In addition to the foregoing, the term "Environmental Regulations" shall be deemed to include, without limitation, local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other government restrictions and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant thereto, which deal with or otherwise in any manner relate to environmental matters of any kind.

- 1.11 Improvement shall mean any object, thing or activity of any kind installed, located or occurring on the Property which changes the external appearance of any portion of the Property, or of any structure or thing affixed on the Property, from its external appearance as it existed immediately prior to the installation, location or occurrence of the object, thing or activity. Improvements include but are not limited to all buildings, structures, landscaping, exterior walkways, parking areas, driveways, loading areas, signs, fences, poles, walls, utility lines, lighting, excavations, grading, berms, draining facilities, repairs, alterations, painting and all other structures or objects of any type or kind installed or constructed on the Property.
- 1.12 Mortgagee means any person or entity named as the mortgagee or beneficiary under a Mortgage or any successor in interest to such Mortgagee.
- 1.13 Occupant means and includes Declarant and Owners and their respective heirs, successors and assigns and any person who shall be from time to time entitled to the use and occupancy of space located within the Project under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.
- 1.14 Owner means one or more persons or entities who are alone or collectively the record owners of any portion of the Property, including Declarant, but excluding those having an interest merely as security for the performance of an obligation.
- 1.15 Permittees means all Occupants and all customers, employees, licensees and other business invitees of Occupants.
- 1.16 Project means the Property, together with any Improvements that are located upon or may in the future be located on the Property, which shall be commonly known as Riverside Towers.
- 1.17 Property means the real property described in recital Paragraph A, together with any Improvements thereon and annexations thereto, less any

portion thereof that is deeded or otherwise dedicated to the City for public use.

1.18 Restricted Parking means and includes any area in the Property designated for the exclusive use of an Owner or the Owner's lessee and its business invitees and guests.

1.19 Voting Rights means the right of any Owner, including Declarant, to cast votes for the purpose of taking certain actions under this Declaration. The formula to be used for calculating votes of the Owners is as follows:

(a) An Owner shall be entitled to one (1) vote for each full acre of land owned, plus a one-tenth (1/10) vote for each additional full one-tenth (1/10) acre of land owned within the Property.

(b) When more than one person or entity owns any portion of the Property, the vote for such Owner shall be exercised as they among themselves collectively determine, but in no event shall more votes be cast with respect to any Owner than the number of votes such Owner would be entitled to cast with respect to ownership of any portion of the Property.

ARTICLE 2 SUBMISSION

2.1 Declaration. Declarant hereby declares that all of the Property described in Recital A, together with any Improvements that at any time are located on any portion of the Property, shall be held, sold, conveyed, occupied, transferred, designed, constructed, operated, maintained, leased, and subleased subject to the covenants, conditions, restrictions, and easements contained in this Declaration. This is for the purpose of protecting the value and desirability of the Property. This Declaration shall be construed as covenants of equitable servitude; shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

2.2 Enforcement. Unless otherwise specifically set forth herein, the Declarant, Owner, Architectural Control Committee or any other party who is specifically benefited under the terms of this Declaration shall have the right to enforce, by any proceeding at law or in equity, all easements, covenants, conditions, restrictions, rights and/or duties now or hereafter imposed by the provisions of this Declaration. Failure of the Declarant, Architectural Control Committee or any Owner to enforce any easement, covenant, condition, restriction, right and/or duty contained herein on any one or more occasion shall not be deemed a waiver of the right to do so on any subsequent occasion. Further, nothing contained in this Declaration shall be construed or interpreted to impose any legal duty or obligation on any party, including Declarant, any Owner or the Architectural Control Committee, to enforce by any proceeding at law or in equity, any easement, covenant, condition or restriction contained in this Declaration.

2.3 Attorney Fees and Legal Costs. In any legal proceeding brought by any party against Declarant or any Owner for violation of any easement, covenant, condition, restriction, right and/or duty contained in this Declaration, or for the equitable enforcement thereof, the prevailing party shall be entitled to recover all costs and a reasonable attorney fee incurred as a result of such proceeding.

ARTICLE 3
ARCHITECTURAL CONTROL COMMITTEE (the "ACC")

3.1 Members of the ACC. The ACC shall be composed of the Declarant or its representative until the earlier of when Declarant no longer owns a fee interest in any portion of the Property or until the Declarant expressly surrenders this right by written instrument. At such time as Declarant surrenders the right to appoint the ACC, the right to appoint, remove, augment or replace members of the ACC shall automatically transfer to Owners of the Property. Thereafter members of the ACC shall be nominated and appointed by the election of the Owners according to the Voting Rights defined in Section 1.16 above.

3.2 Submittal and Approval. No building, fence, wall, structure or other Improvement shall be commenced, erected, placed, altered, or maintained upon the Property nor shall any exterior addition to or change or alteration, including exterior color, thereon be made until the complete plans and specifications showing the nature, kind, shape, height, and materials, including the color scheme and location of same shall have been submitted for approval to the ACC, or the Declarant, if no ACC has been formed (references to the ACC shall also mean the Declarant if the ACC has not been formed). The ACC shall only approve the proposed work if it is substantially in harmony and compliance with the color scheme, shape, height, design, and use of materials that are provided for in this Declaration and that are found in the then existing Improvements in the Property. The ACC will not permit any work to be done that requires a building permit without the approval being conditioned on providing a copy of the building permit to the ACC before the work commences.

The ACC shall approve or disapprove such design and location in writing within thirty (30) days after said plans and specifications have been submitted to it.

Until completion of the Project, the provisions of this Article shall not be applicable to any building, fence, wall or other structure or Improvement commenced, erected, or maintained upon the Property by the Declarant, and Declarant shall not be required to solicit or obtain the approval of the ACC for the commencement, erection or maintenance upon the Property by Declarant of any building, fence, wall, other structure, or Improvement.

In the event the ACC fails to approve or disapprove such location, plans, and specifications or other requests within thirty (30) days after the submission thereof to it, then such approval will not be required, provided that any structure or Improvement so

erected or altered, conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Property. The grade, level, or drainage characteristics of the Project or any portion thereof shall not be altered without the prior written consent of the ACC.

3.3 Design Review Guidelines. The ACC may adopt from time to time by resolution Design Review Guidelines for use in evaluating proposed work and to facilitate administration of its duties under this Article. The ACC has the right to modify or supplement the Design Guidelines from time to time in a manner consistent with the Declaration and the overall development of the Property; provided, however, that no modification to the Design Guidelines may result in a provision that contradicts or conflicts with any provision of this Declaration or that is contrary to the general intent or purposes of this Declaration. Once plans for any Improvement have been approved, subsequent changes to the Design Guidelines shall not affect any prior approval.

3.4 Waiver or Variance of Design Guidelines. To encourage good design, innovation and flexibility, the ACC may waive or grant a variance of any of the requirements or restrictions contained in the Design Guidelines if, in the sole judgment of the ACC such waiver or variance would be consistent with the general intent and purposes of this Declaration and would not adversely affect the Property. Variances may be approved to correct errors in surveying or mis-location of Improvements, or where the application of any of the provisions of the Declaration or the Design Guidelines to a particular Improvement would, by reason of unusual circumstances or surrounding, result in undue hardship. Any Owner desiring a waiver or variance shall submit a written request to the ACC and shall provide any information and material requested by the ACC. A waiver or variance may be granted only with the written consent of the ACC. If the ACC fails to approve or disapprove in writing any request for a waiver or variance within thirty (30) days after received all requested information relating to the waiver or variance, the requested waiver or variance will be deemed approved.

3.5 Barriers Restricted. Except as specifically approved by the ACC, no Owner shall permit to be constructed or erected within the Property any fence, wall or barricade, whether of a temporary or permanent nature, which materially limits or impairs the free access of motor vehicles and pedestrians within the Property. Notwithstanding the foregoing, temporary barriers may be erected during periods of repair or construction, or during periods where any Improvement may be unsafe or unusable due to damage or destruction, as such may be reasonably necessary.

ARTICLE 4 DUTIES OF OWNER

4.1 Duties. In addition to the duties and powers enumerated in this Declaration, and without limiting the generality thereof, the Owner shall:

- (a) Manage the Project.

(b) Pay all real and personal property taxes and other charges assessed against the Property.

(c) Have the authority to obtain, for the benefit of the Property, all water, gas, electric, sewer, refuse collection, landscape and security services, street maintenance, and all other services needed to administer the Project.

(d) Maintain hazard and liability insurance and such other policy or policies of insurance on the Property.

(e) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Owner.

(f) Enforce applicable provisions of this Declaration.

(g) Adopt and enforce reasonable rules and regulations not inconsistent with this Declaration, and to amend the same from time to time relating to the motor vehicle traffic and parking, disposal of waste materials, and other activities which, if not so regulated, might detract from the appearance of the Project, or offend or cause inconvenience or danger to persons in the Project.

4.2. Every Owner shall:

(a) Maintain any portion of the Property owned by such Owner and all Improvements located thereon in a clean, safe, attractive and in good condition at all times;

(b) Repair any structural or visible defects or damages to Improvements, including painting thereof as required, and to keep the exterior of buildings and other structures and Improvements of the Owner in a good, clean, safe, attractive, first-class condition; and

(c) Keep any portion of the Property owned free from weeds, trash and debris, and keep all signs and lighting clean and functional.

ARTICLE 5 USE RESTRICTIONS

5.1 General Use Restrictions. The Property shall only be used for those uses and categories of uses, from time to time permitted within the commercial planned unit development zone of the City, but in all events, consistent with the use restrictions incorporated in this Article.

5.2 Permitted Principle Uses. The following principle uses are as of the date of this Declaration, permitted uses.

- (a) Computer and Software Development and Corporate offices, but shall not include manufacturing except as a secondary use.
- (b) Professional, Business, and Administration Offices.
- (c) Finance, Banking, Insurance, Title and Escrow, all Real Estate Services.
- (d) Medical, Dental and Medical Services, but shall not include the sale, rental or leasing of medical equipment, except as a secondary use.
- (e) Communications including radio and television broadcasting (studios only), telephone company offices, recording and sound studios, motion picture studio.
- (f) Customer Call Centers and Catalogue Sale Centers.
- (g) Research Services – including laboratories, scientific, medical, and chemical, applied physics, mechanical, electronic, biological, genetic or other similar experimental research, product development or testing facilities.
- (h) Marketing, Telemarketing, and Advertising Services.
- (i) Planted open space and recreation facilities such as parks, walking bicycle trails, water features, tennis courts, athletic fields, or other similar uses.
- (j) Seminar training, conference centers and educational facilities.
- (k) Corporate reception centers.

5.3 Permitted Secondary Uses. The following secondary uses which support or are accessory to the primary uses, are, as of the date this Declaration is recorded, permitted subject to the development and performance standards and conditions set forth therein.

- (a) Support and maintenance Shops for the above uses.
- (b) Food and drink concessions, services or eating establishments which are provided for the convenience of the occupants of the buildings including, but not limited to corporate lodging, restaurants.
- (c) Printing, photo copying, publishing and allied industries.

- (d) Storage activities and warehouse facilities are permitted only as part of a primary use, and shall comprise less than 50% of the primary use floor space and are subject to all design guidelines and standards applicable.
- (e) Day Care Center.
- (f) Off-street Parking and Parking Structures incident to the above building uses.
- (g) Light manufacturing uses permitted shall include fabricating, processing, testing, assembling, packaging, and manufacture of products, which have a high value in relation to bulk, from previously prepared materials, but not including uses involving primary production of wood, metal, petroleum, or chemical products from raw materials. Such operations shall not deal in large volumes of product handling, storage and distribution; nor shall such operations include on-site milling, forging, or heavy grinding of parts or similar manufacturing operations. It is intended that light manufacturing involving the manufacturing or assembling of electronic components for use in computer, electronic or telecommunications equipment and peripherals be permitted, subject to all restrictions and prohibitions contained in this Declaration.
- (h) Computer and office equipment, including sales and service.
- (i) Postal and packaging mail center.
- (j) Physical fitness training centers. Recreation and fitness retail sale establishments.
- (k) Other retail commercial establishments may be permitted where the size, use and design are in harmony with the general theme and character of the Project, provided that no merchandise shall at any time be displayed or stored on the exterior of any building, and that no exterior advertising of any specific product, other than the business name of the primary occupant of the building, shall be displayed on the exterior of any building in which on-site retail sales are permitted to occur.

5.4 Uses Specifically Prohibited. Notwithstanding anything to the contrary in Sections 5.2 and 5.3, the enumerated uses specified above shall not be construed to include, either as a primary or secondary use, any of the following: (a) Terminals, including truck or bus terminals, and other distributed facilities; (b) Food processing operations, except as incidental to permitted restaurants and cafeteria operations; (c) sand, gravel, and other extraction mining; (d) Manufacturing and assembly operations, except as otherwise specifically provided in this Declaration; (e) Distillation, refining, smelting, agriculture or mining operations; (f) Petroleum storage, sales, processing or production, (g) junk or salvage yards.

5.5 Generally Prohibited Uses. Notwithstanding any other provisions of this Declaration, no use or activity shall be established, maintained, conducted or permitted on any portion of the Property which will cause or result in any: (a) emission of smoke, fumes, odors, gases, vapors, steam, dust, sweepings, dirt, cinders or other particles or substances into the atmosphere which are detectable outside the boundaries of the Parcel where created (except to the extent that such fumes or odors are incidental to the normal operation of a restaurant) or which may be detrimental to the health, safety, welfare or comfort of any owner or any other person, to the condition of any other portion of the Property, or to any vegetation within the Property; (b) discharge of fluids, gases, solid wastes, or other harmful materials into any drainage canal or other waterway which may adversely affect the health, safety, welfare or comfort of any Owner or other person or the condition of any portion of the Property; (c) discharge of glare or heat, subsonic or ultrasonic sounds, or atomic, electromagnetic, microwave, ultra-violet, laser or other radiation which is detectable from any point exterior to the Parcel upon which the operation is being conducted; (d) recurrent or continuous emission of sound or noise from any Parcel which may be heard without instruments, outside the boundaries of the Parcel of origination; (e) recurrent or continuous ground vibrations perceptible without instruments at any point exterior to the Parcel of origination; (f) physical hazard by reason of fire, radiation, explosion or other similar cause to either the Property or the surrounding area; (g) persisting unsightly condition on any Parcel which is visible from any street or any portion of the Property; (h) excessive risk of fire or explosion that increases the casualty insurance premiums for improvements on the Property; or (i) violation of any applicable statute, ordinance, rule, regulation, permit or other validly imposed requirements of any governmental body.

5.6 Building Height Limitation. No building constructed on the Property shall exceed three (3) stories or forty (40) feet, whichever is lower.

5.7 Outside Storage. No materials, supplies, equipment finished or unfinished products or articles of any kind shall be stored or permitted to remain on any portion of the Property outside of the Building.

5.8 Traffic and Parking Management Plan. Owners shall encourage their respective tenants and employees to carpool and to use any available mass transportation in order to minimize traffic congestion, conserve energy and reduce parking congestion.

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

5.10 Hazardous Materials.

- (a) Restriction on Hazardous Materials. Any Hazardous Material brought upon, kept, used, generated, stored, treated, disposed of or released in or about the Property, or soil or groundwater of same, by any Owner of any portion of the Property, or any Occupant or Permittee of such Owner, or any party acting on behalf of any of them in a manner which does not comply with applicable Environmental Regulations shall be referred to herein as a "Hazardous Condition". In the event any Hazardous Condition occurs, the Owner of the Property shall promptly take all actions at its sole expense as are necessary to correct said violation to the satisfaction of the regulating entity.
- (b) Indemnify. If an Owner breaches the obligations stated in Section 5.10(a) above or if a Hazardous Condition exists at any time, then the Owner shall indemnify, defend and hold the Declarant, the Owners of other portion of the Property partners, officers, directors, shareholders, employees, and agents of the Declarant and Owners harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses, including, without limitation, (1) diminution in value of the Property, (2) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, (3) sums paid in settlement of, payment of, or in order to comply with any claims, suits, actions, judgments, proceedings, or investigations, (4) costs, expenses, reasonable attorney fees, consultant fees, expert fees and incidental costs incurred in connection with any of the above or any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental or quasi-governmental entity. The obligations contained in this Article 5.10 shall survive the termination of this Declaration.

5.11 Storm Drainage. All storm drainage facilities on the Property shall conform to the requirements of the master storm drainage system which Declarant has developed for the Property and to all applicable laws, ordinances and regulations of all governmental agencies and authorities having jurisdiction. Each Owner shall maintain, repair, replace and keep free of debris and obstruction all drainage systems and facilities located on such graded to assure proper drainage. The Architectural Control Committee may require, as part of the drainage plan for the Property, that parking lots or other areas be designed to provide storm water retention as provided in the Design Guidelines and the applicable laws, ordinances and regulations of all governmental agencies and authorities having jurisdiction.

5.12 Excavation. No excavation shall be made except in connection with the construction of any Improvement, and upon completion thereof any exposed openings shall be backfilled and disturbed ground shall be graded, leveled and landscaped.

5.13 Solar Devices. Solar collectors and other solar energy devices are permitted. All exterior solar energy devices, including, but not limited to, solar panels, collectors and accessories, must be architecturally integrated into building design, or, if

free-standing, must be visually screened from all streets by landscaping or other means acceptable to the Architectural Control Committee.

5.14 Utility Lines Underground. All utility lines, pipes and conduits within the Property shall be installed underground and no such utility lines, pipes or conduits or supporting apparatus shall be permitted above ground, except to the extent reasonably necessary to support such underground utilities.

5.15 Zoning Variances. No Owner of any portion of the Property shall seek or obtain a zoning variance or a conditional use permit with regard to such Owner's portion of the Property without the prior written approval of the Architectural Control Committee, nor shall any Owner request either a rezoning of any portion of the Property without the prior written approval of the Architectural Control Committee.

5.16 Planning Documents. No subdivision plat or replat of all or any portion of the Property may be submitted to any governmental authorities or recorded unless such plat or replat has first been approved in writing by the Architectural Control Committee. No request for rezoning and no preliminary or final project plan (as those terms are defined in the City's Zoning Ordinance) may be submitted to any governmental authorities for approval without the prior written approval of the Architectural Control Committee.

5.17 Lease. All leases must be in writing and provide therein that the lease is subject to this Declaration.

ARTICLE 6 EASEMENTS

6.1 Owners Rights and Duties: Utilities and Cable Television. The rights and duties of an Owner with respect to water, sewer, electricity, natural gas (gas), telephone, cable television lines and drainage facilities shall be governed by the following:

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

- (b) Wherever sanitary sewer, water, electricity, gas, telephone or cable television lines or drainage facilities are installed within the Property, which lines or facilities serve more than one Owner, the Owner of the Property served by said lines or facilities shall be entitled to the full use and enjoyment of such portions of said lines or facilities which service the Owner's portion of the Property.
- (c) The foregoing provisions of this Section shall not be deemed to give any Owner the right to connect to any utility line or facility without first complying with all the requirements of the utility company providing the service in question, including without limitation, the payment of all required connection fees and related charges.

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

6.3 Non-exclusive Easements. The following nonexclusive easements are hereby reserved and established for the benefit of each Owner, and the Occupants and Permittees of each Owner:

- (a) Nonexclusive easements over, upon and across the Property for the purpose of pedestrian traffic and (1) the public streets and alleys now or hereafter abutting or located on any portion of the Property; (2) the parking areas now and hereafter located on the Property; and (3) limited, however, to those portions of the Property which are improved by the Owner thereof from time to time for pedestrian walkways and made available by such Owner for general use, such as portions may be reduced, increased or relocated from time to time by each such Owner.
- (b) Nonexclusive easement for the purpose of vehicular traffic over, upon, and across the Property and (1) the public streets and alleys now and hereafter abutting any portion of the Property; and (2) limited however, to those portions of the Property which are improved by the Owner thereof from time to time for vehicular access ways as such portions may be relocated from time to time by such Owner.
- (c) Nonexclusive easements over, upon, across and between the access points and driving lanes from time to time established on the Property for the purpose of providing ingress, egress, and access to (1) the easements hereby created; and (2) the public streets and alleys now and hereafter abutting any portion of the Property.

6.4 Access to Perform Duties. There is hereby granted unto the City and any other governmental authority, an Easement, over and through all portions of the Property

for the purpose of providing access to policeman, fireman, ambulance, personnel and similar emergency personnel in the performance of their respective duties.

6.5 Extension of Easement. Each Parcel, whether now existing or whether in the future existing as defined in accordance with the provisions of this Declaration, shall have appurtenant thereto, and shall be benefited and burdened by, as applicable, the Easements herein granted. Each Owner shall be entitled to the benefit of the Easements herein granted and shall be entitled to permit each Occupant, together with any agent, contractor, licensee, employee and any business customer, invitee and guest of said Owner and/or Occupant ("Other Users"), the non-exclusive right to enjoy the benefits of the Easement herein granted, but said Owner's and Other User's use and enjoyment of its Parcel shall be subject to and burdened by the Easements also herein granted.

6.6 No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration will be strictly limited to and for the purposes herein expressed. Notwithstanding the grant of the Easements, each Owner may be entitled to take whatever steps it deems necessary to protect and preserve the private ownership of its portion of the Property and to prevent same from being dedicated to the public use as a matter of law; provided, however, that such steps shall be taken in such manner and at such time as shall cause minimal disruption of the occupant and usage of said Owner's Property. An Easement granted herein to the City shall be deemed granted to the City only, which may be used by its employees, agents, contractors and representatives in performance of their respective duties within the Property, and shall not be construed to be a grant to the public generally.

ARTICLE 7 NATURE OF EASEMENTS AND RIGHTS GRANTED

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

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

- (a) Are made for the direct, mutual and reciprocal benefit of the Owners, Occupants and Permittees of the Property;
- (b) Create mutual equitable servitudes upon the Property;

(c) Constitute covenants running with the land; and

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 Amendment. Except where otherwise specifically provided in this Declaration, this Declaration may only be amended upon the affirmative vote of the Owners holding not less than sixty-six and two-thirds percent (66-2/3%) of the Voting Rights as defined in Article 1, Section 1.16. Any such amendment shall recite that a vote of the Owners has been properly taken and that the amendment has been approved in accordance with the provisions hereof, and shall be recorded in the office of the Washington County Recorder, State of Utah. Any such amendment shall take effect upon such recordation.

8.2 Amendment by Declarant. Declarant shall have the right to amend this Declaration at anytime for any reason, so long as Declarant is the owner of at least 50% of the units.

8.3 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property and Project for a term of fifty (50) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of ten (10) years, unless terminated at the end of any such period by the affirmative vote of sixty-six and two-thirds percent (66-2/3%) of the Owners. No such termination shall terminate any Easement granted herein and all such Easements shall survive any termination of this Declaration and may be extinguished only in the manner provided by law for the termination of an Easement.

8.4 No Merger. The easements, covenants and restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that any of the Property may be owned by the same persons from time to time. It is the express intent of the Declarant to create a common scheme for the development and operation of the Property which will not be terminated by the doctrine of merger or otherwise unless this Declaration is terminated in accordance with the provisions hereof.

8.5 Assignment of Declarant's Rights and Remedies. Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person, corporation, or other entity which assumes such assigned duties of Declarant

hereunder. In the event Declarant attempts to assign less than all of the rights, powers and reservations of Declarant set forth herein, then any such assignment must specify which rights, powers and reservations are being assigned and the only party that shall be permitted to exercise a right reserved or granted unto Declarant shall be the party to whom such right has been assigned. To be effective, such assignment must be in writing, must be recorded in the office of the Washington County Recorder, State of Utah, and must specifically refer to the rights, powers and reservations of Declarant hereunder which are being assigned. Upon acceptance of such assignment by any such person or entity (such acceptance may be shown, among other ways, by execution of such assignment by such assignee, or by such assignee recording the assignment in the office of the Washington County Recorder, State of Utah), and recording of such assignment in the office of the Washington County Recorder, State of Utah, said assignee shall, to the extent of such assignment, assume, and be deemed to have assumed, Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment and recording, and to the extent thereof, the party making such assignment shall be relieved from all liabilities, obligations and duties hereunder arising from and after the date of such assignment. Anything contained elsewhere herein to the contrary notwithstanding, the mere conveyance or transfer of ownership of the Property by Declarant to any person or party, whether by deed or other instrument of conveyance, shall in no way convey any right, power or reservation of Declarant hereunder. A successor to Declarant by reason of any merger or consolidation of the then Declarant shall automatically be deemed to have assumed Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein.

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

8.7 Violation of Law. Any material violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any Property or Improvements within the Property, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

8.8 No Third Party Beneficiary. This Declaration has been executed and recorded for the benefit of Declarant and the Owners. Unless otherwise set forth herein with specificity which shall include the name of the party which shall be intended to be benefited by a specific provision of this Declaration, no other party shall be construed to be an intended third party beneficiary of any of the rights, duties or obligations set forth herein and no party other than Declarant or any Owner shall, therefore, have the right to enforce any provision hereof, unless such right shall be specifically set forth herein.

8.9 Words of Conveyance. The use of the word "grant," and any form thereof, as used in provisions, of this Declaration to create or preserve easements, licenses or other rights and privileges described herein shall be deemed to be construed in such manner as shall be required to give effect to the easement, license, right or privilege intended to be created or preserved by such provisions and, to the extent necessary to effect such result, any use of the word grant, or any form thereof, shall be deemed to include such other words of conveyance (e.g., such as reserve, quitclaim, convey, transfer, etc.) as may be required to give effect to the easement, license, right or privilege intended to be created or preserved.

8.10 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

8.11 Gender and Number. In this Declaration, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate,

8.12 Captions. The titles, headings and captions used herein are for convenience only and are not a part of this Declaration and shall not be considered in construing, nor shall same be used to limit or amplify the terms and provisions hereof.

8.13 Invalidity of Provision. If any provision of this Declaration as applied to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Declaration, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Declaration as a whole.

8.14 Exhibits. Any exhibits to this Declaration are incorporated herein by this reference.

8.15 Governing Law. This Declaration and any exhibits attached hereto shall be governed by and construed under the laws of the State of Utah.

8.16 In addition to the annual assessments and special assessments for capital improvements authorized herein, the association shall levy such assessments as may be necessary from time to time for the purposes of repairing and restoring the damage or disruption resulting to accesses or other common areas from the activities of the city of St. George in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the city up to and including the meters for individual units, and that they are installed and shall be maintained to city specifications.

8.17 All common areas, parking areas and private accesses shall have an easement for telephone, sewer, gas, water, power and drainage for the installation and maintenance of improvements and such easements shall be subject to the right of the city

