



**DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
SHADOWHAWK TOWNHOMES**

THIS DECLARATION is made and executed this 5 day of August, 2013, by Garr & Lyle, a Utah limited liability company (the "Declarant"), with respect to a townhome community known as Shadowhawk Townhomes ("Shadowhawk") which is located in the City of St. George, Utah.

RECITALS:

- A. Declarant is the record owner of Townhomes and that certain tract of Property more particularly described in Article II of this Declaration.
- B. Various improvements have been made to the Property described in Article II of this Declaration containing certain Townhome units ("Unit") and Common Areas. Declarant desires to provide for the preservation of the values and amenities in said development and for the maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Townhomes described in Article I of this declaration of covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth.
- C. Declarant deems it desirable, for the efficient preservation of the values and amenities in the Project, to have an entity which possesses the power to maintain the Townhouses and administer the Common Areas, to collect and disburse the assessments, and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purposes, Declarant has, in conjunction with recordation of this Declaration, caused to be joined under the laws of the State of Utah, this townhome development with the existing non-profit corporation, SHADOWHAWK TOWNHOMES HOMEOWNERS ASSOCIATION, INC.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby declares that the property described in Article I of this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth.

ARTICLE I. DEFINITIONS

When used in this Declaration (including in that portion hereof titled ("Recitals")) the following terms shall have the meanings indicated:

- 1. *Articles or Articles of Incorporation* shall mean and refer to the instrument titled "Articles of Incorporation of the Shadowhawk Townhomes Homeowners Association, Inc." which was filed for recording in the office of the Washington County Recorder, located in St. George, Utah, on or about August _____, 2013.
- 2. *Association* shall mean and refer to SHADOWHAWK TOWNHOMES HOMEOWNERS ASSOCIATION, INC., a Utah nonprofit corporation.

3. **Common Areas or Common Areas and Facilities** shall mean and refer to all portions of the Property owned by the Association for the common use and enjoyment of the Owners, and shall include, but not be limited to:

(a) All portions of the Property not specifically included with the individual townhome Units or not conveyed or dedicated to Washington County ("County") or other entity.

(b) All Common Areas and Limited Common Areas designated as such on the Plat.

(c) All foundations, columns, girders, beams, supports, main walls, roofs, corridors, stairs, stairways, yards, landscaping, fences, service and parking areas and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance, and safety of the foregoing or normally in common use.

(d) All installations, equipment, and lines, if any, now or hereafter located on, over, or under the Common Areas and connected with or related to the finishing of Project utility services such as water, sewage disposal, electricity, and telephone, and which are not owned by or dedicated to a governmental or quasigovernmental authority or public or private utility company and which are not reserved by Declarant.

(e) Entry features, neighborhood parks and other amenities not dedicated to the County.

4. **Declarant** shall mean and refer to Garr & Lyle, LLC, and/or any successor to said Declarant which, by operation of law, through a voluntary conveyance, transfer, or assignment, or as a result of the foreclosure of an encumbrance granted by Declarant, comes to stand in the same relationship to the Project.

5. **Declaration** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Shadowhawk Townhomes.

6. **Eligible Insurer or Guarantor** shall mean and include an insurer or governmental guarantor of a Mortgage that has requested notice of certain matters from the Association in accordance with this Declaration.

7. **Eligible Mortgagee** shall mean and include a Mortgagee that has requested notice of certain matters from the Association in accordance with this Declaration.

8. **Limited Common Areas and Facilities or Limited Common Areas** shall mean and refer to those Common Areas designated in the Declaration or on the Plat as reserved for the use of a certain Unit to the exclusion of the other Units.

9. **Living Unit ("Unit")** shall mean and refer to a townhome that is located in the designated townhome pods which is designed and intended for human occupancy and shall mean and refer to a single Unit in this Project including mechanical equipment and appurtenances located within any one unit or located without said unit but designated and designed to serve only the unit, such as appliances, electrical receptacles and outlets, air conditioners, fixtures and the like, as well as

all decorated interiors, all surfaces of interior structural walls, floors and ceilings, both inside and outside surfaces of windows and window frames, both inside and outside surfaces of doors and door frames, and trim, consisting of, among other things and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the unit and serving only the unit, and any structural members of any other Property of any kind, including fixtures and appliances within any unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the unit is situated shall be considered part of the unit.

10. **Member** shall mean and refer to every person who holds membership in the Association.
11. **Mortgage** shall mean and include a first mortgage on any Unit or a first deed of trust on the Unit.
12. **Mortgagee** shall mean and include both the holder of a mortgage under a first mortgage on any Unit and a beneficiary under a first deed of trust on any Lot.
13. **Open Space Area** shall mean and refer to all portions of the Common Areas, excluding the following: Limited Common Areas; the Project's Private Streets and parking areas; the Project's utility and drainage lines and facilities; landscaped or otherwise developed portions of the Common Areas approved by Washington County.
14. **Owner** shall mean and refer to the person or persons who hold record title (in the office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in any mortgage, deed of trust, or like instrument. The term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.
15. **Plat or Plats** shall mean and refer to any duly approved and recorded plat recorded in connection with Shadowhawk Townhomes, in Washington County, State of Utah.
16. **Project** shall mean and refer to Shadowhawk Townhomes, as shown on the Plat and governed by this Declaration.
17. **Property** shall mean and refer to the tract of real property described in Article II of this Declaration.

ARTICLE II. PROPERTY DESCRIPTION

The property which is initially to be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property situated in Washington County, State of Utah:

See "Exhibit A" attached hereto and incorporated herein by this reference.

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

EXCLUDING all presently existing or to be constructed or installed utility lines and related facilities which are now or hereafter owned by any governmental or quasigovernmental authority or by any public or private utility company, including (without limitation) all water pipes, lines, and related facilities now or hereafter located within the Project.

ALL OF THE FOREGOING IS ALSO SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasigovernmental authorities; all Patent reservations and exclusions; the reservation unto Declarant of all oil, gas, ores and minerals situated in, upon or under the above-described parcels, together with the right to enter upon the surface thereof to drill, mine, remove or sell said oil, gas, ores and minerals and all other rights reasonably connected with or relative to such drilling, mining, removal or sale, any other mineral reservations of record and rights incident thereto, provided however, that the exercise of the aforesaid rights shall be limited in the following manner:

(1) the rights shall exclude gravel pit operations, (2) Declarant may not come upon any unit/lot which has been sold or (3) create any nuisance or violate any governmental law or regulation; all easements and rights-of-way of record, otherwise existing, or enforceable in law or equity; and any easements, rights-of-way, encroachments, shortages in area, or discrepancies shown on or revealed by the Plat, or otherwise existing or discoverable from an inspection of the above-described parcel of real property.

RESERVING UNTO DECLARANT: (i) such perpetual easements and rights of ingress and egress over, across, through, and under all portions of the above-described parcel of real property comprising Common Areas (including without limitation, Private Streets) and all portions of each townhome Unit as are set out and designated on any recorded plat of the Declarant as may be necessary or convenient for Declarant (in a reasonable manner not inconsistent with this Declaration) to such roads, structures, facilities, and other improvements (including recreational improvements and utilities) designed for the use and enjoyment of all the Members as Declarant may determine in its sole discretion to be appropriate; and (ii) such perpetual easements and rights of ingress and egress over, across, through, and under all portions of the above-described parcel of real property comprising Common Areas (including, without limitation, Private Streets) and all portions of each lot/unit as are set out and designated on any recorded plat of the Declarant, with no limits as to the extent of the burden which may be imposed thereon, as may be necessary or convenient to enable Declarant to develop and use any or all additional land (as determined in Declarant's sole discretion and regardless of whether or not the portion(s) of any additional land being so developed have been or will be added to the Project) and to provide for such needs of and services to the additional land as may be determined by Declarant in its sole discretion. The easements and rights set forth in the foregoing item (ii) shall include (without limitation) the right to hook into and use any utility line, pipe, conduit, Private Street or other facility serving the Project and to utilize and/or enlarge all storm water runoff retention areas, structures and Private Streets located in the Project. Declarant shall have the right to assign, convey and/or transfer all or any portion of the easements and rights herein reserved to County, any other governmental or quasi-governmental body having jurisdiction over the Property, and any private or public utility company servicing the Project or any part of the additional Land (whether or not such part has been or will be added to the Project).

ARTICLE III. ASSOCIATION MEMBERS AND VOTING RIGHTS

1. **Membership.** Every Owner of a Unit shall be a Member of the Association. No evidence of membership in the Association shall be necessary other than evidence of ownership.

Membership in the Association shall be mandatory, shall be appurtenant to the Unit in which the Owner has the necessary interest, and shall not be separated from the Unit to which it appertains.

2. ***Voting Rights.*** The Association shall have the following-described two classes of voting membership:

Class A. Class A Members shall be all Owners, except Declarant. Class A Members shall be entitled to one (1) vote for each Unit in which the interest required for membership in the Association is held. Although each of the multiple Owners of a single Unit shall be a Class A Member, in no event shall more than one (1) Class A vote exist or be cast on the basis of a single Unit. Which of the multiple Owners of a single Unit shall cast the vote on the basis of the Unit is determined under Section 3 of this Article III.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to one (1) vote for each outstanding fee title that has not been conveyed by Declarant to a purchaser (in addition to any votes to which it is entitled as a Class A Member). The Class B Membership shall cease and become a nullity upon the first to occur of the following: (i) after fee titles to ninety percent (90%) of the Units initially contained in the Project have been conveyed by Declarant to purchasers; or (ii) the expiration of five (5) years after the date on which Declarant first conveys to a purchaser fee title to a Unit.

3. ***Multiple Ownership Interests.*** In the event there is more than one Owner of a particular Unit, the vote relating to such unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

4. ***Lists of Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors.*** The Association shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him; and (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Unit which is encumbered by the Mortgage held by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall notify the Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Washington County, Utah. The Association may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it, or at its option, the Association may act and rely on current ownership information respecting any Unit which is obtained from the office of the County Recorder of Washington County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Association is otherwise advised in writing.

ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS

1. ***Easement of Enjoyment.*** Each Owner shall have a nonexclusive 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 Unit and in no event shall be separated therefore. Any Owner may delegate the right and easement of use and enjoyment described in this Section to any

family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Unit.

2. **Form for Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit shall describe the interest or estate involved substantially as follows:

Unit No. ____ contained within Shadowhawk Townhomes Plat, recorded in Washington County, Utah on as Entry No. ____ and in the "Declaration of Covenants, Conditions, and Restrictions of Shadowhawk Townhomes" recorded in Washington County, Utah on entry No. ____, in Book ____, at Page ____ TOGETHER WITH a nonexclusive right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Plat and said Declaration of Covenants, Conditions, and Restrictions. SUBJECT TO such perpetual easements and rights of ingress and egress on, over, under, through, and across the lot which are associated with the utilities and private streets in said development.

Whether or not the description employed in any such instrument is in the above specified form, however, this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the right and easement of use and enjoyment to the Common Areas, shall be separated from the Unit to which they appertain, and even though not specifically mentioned in the instrument of transfer, such nonexclusive right and easement of use and enjoyment to the Common Areas shall automatically accompany the transfer of the Unit to which they relate. Notwithstanding any inference that can be drawn from this Declaration to the contrary, the owner of each Unit shall be responsible for the payment of any and all charges, assessments and fees (including hookup fees) relating to all utilities provided to the Unit, and the Association shall not be liable for any part of such charges, assessments or fees.

3. **Transfer of Title.** Declarant agrees that it shall use its best efforts, at or prior to the time it conveys the first Unit to an Owner, or at such time as it is determined that Common or Limited Areas shall be created by Declarant, to convey by Warranty Deed to the Association good and marketable title to the Common Areas to free and clear all monetary liens and encumbrances (other than the lien of current general taxes and the lien of any current assessments, charges, or taxes imposed by governmental or quasigovernmental authorities).

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

(a) The right of the Association to suspend a Member's voting rights and right to the use of the Common Areas for any period during which an assessment on such Member's Unit remains unpaid, or for a period not exceeding sixty (60) days for any infraction of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

(b) 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;

(c) The right of the Association (without the consent of Owners, Members, Mortgagees, or any other persons or entities) to grant permits, licenses, and easements over, across, through and under the Common Areas to any governmental or quasigovernmental authority, to any public or private utility company, or to any other person or entity for the purpose of

installing, maintaining, or providing utilities and related facilities or roads or for such other purposes reasonably necessary or useful for the proper maintenance or operation of the Project; and

(d) The right of Washington County, any other governmental or quasigovernmental body having jurisdiction over the Property, and any private or public utility company serving the Project or any part of the Additional Land (Whether or not such part has been or will be added to the Project) to access and rights of ingress and egress over, across, through, or under the Common Areas for purposes of providing police and fire protection, transporting school children, and providing any other governmental, municipal, or utility service to the Project or the Additional Land.

5. **Encroachments and Easements.** In the event that any portion of a Unit encroaches or comes to encroach on the unbuilt or undeveloped Common Areas, another Limited Common Area, or another Unit, as a result of construction, reconstruction, repair, shifting, settlement, or movement, an easement for such encroachment is created hereby and shall exist not to exceed a period of fifteen (15) days from the first day of encroachment, at which time the property encroached upon must be restored to its previous condition by the encroaching party, individual or entity.

ARTICLE V. ASSESSMENTS

1. **Personal Obligation and Lien for Assessments.** Each Owner (including Declarant) shall, by acquiring or in any way becoming vested with an interest in a Unit, be deemed to covenant and agree to pay to the Association the annual and the special assessments described in this Article, together with the charges hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (i) a charge and continuing lien upon the Unit with respect to which such assessment is made; and (ii) the personal obligation of each person who is an Owner of such Unit at the time the assessment falls due. No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Unit.

2. **Purpose of Assessments.** Assessments levied by the Association assented to by a majority of members present at the meeting levying the assessments shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, operation, management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; snow removal from areas within the Project; payment of communication services; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or the Articles of Incorporation. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of the Common Areas and Facilities.

3. **Special Assessments.** From and after the date set for commencement of monthly assessments under Section 6 of this Article V, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (ii) the cost of any construction, reconstruction, repair, or replacement of an improvement, personal property, or fixtures upon the Common Areas. Any such special assessment in excess of five hundred dollars (\$500) per Unit per

year must be assented to by a majority of the votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than fifty (50) days prior to the meeting date.

4. **Unit Assessments.** The Association shall determine and levy an annual assessment as described in this Article. Each Owner of an interest in a Living Unit shall be deemed to covenant and agree to pay to the Association its per capita share of the annual and the special assessments. Expenses and costs for which the Association pays for the direct or indirect benefit of a Unit shall include but not be limited to the following; exterior building upkeep and maintenance, landscaping, common parking access, lots, parking structures and spaces, snow removal, any utilities provided to a Living Unit or common areas not separately metered and billed to the Owner, playgrounds, recreational facilities and amenities. Notwithstanding the quorum requirements detailed in this Article, the Board of Trustees is authorized to increase or decrease the annual assessment by up to ten percent (10%) per annum without a Member vote.

5. **Quorum Requirements.** The quorum required for any action authorized by Section 2 or 3 of this Article V or Section 5 of Article XII hereof shall be as follows: At the first meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of Members shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Sections 3 and 4 of this Article and Section 5 of Article XII hereof) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

6. **Uniform Rate of Assessment.** Both monthly and special assessments shall be fixed at a uniform rate for all Units.

7. **Assessment Due Dates.** Assessments provided for herein shall commence as to all Units on the first day of the month of the first month following conveyance of the Common Areas to the Association. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in amount of the assessment, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

8. **Certificate Regarding Payment.** Upon the request of any Owner, prospective purchaser, or encumbrancer of a Unit, the Association shall issue a certificate stating whether or not all assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons (other than the Owner of the Unit concerned) who in good faith and value rely thereon.

9. **Effect of Nonpayment, Remedies.** Regardless of the terms of any agreement to the contrary, the liability of the Owners of a Unit for the payment of any assessment relating to such Unit shall be joint and several, and any remedy for the collection of such assessment may be enforced against any or all Owners of the Unit concerned; provided, however, that the personal obligation of an Owner to pay assessments shall not pass to his successors in title unless assumed by them. If any assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen

percent (18%) per annum (or, in the event such rate at any time exceeds the maximum legal limit, interest shall accrue at such maximum legal rate) and the Association may bring an action either against any or all Owners who are personally liable therefore or to foreclose the lien against the Unit; provided, however, that the Association shall give the Owner(s) concerned twenty (20) days advance written notice of its intent to pursue one or more of its remedies hereunder. Any relief obtained by the Association (whether or not through judicial action) shall include late fees as determined by the Board, reasonable attorney fees, court costs, and each and every other expense incurred by the Association in enforcing its rights. After institution of a foreclosure action by the Association against any Unit, the Association shall, without regard to the value of such Unit or the extent of the Owner's equity therein, be entitled to the appointment of a receiver to collect any income which may be produced by such Unit.

ARTICLE VI. OPERATION AND MAINTENANCE

1. ***Maintenance by Owners and Related Costs.*** Each Unit shall be maintained by the Owner thereof in a clean and orderly condition and in such condition as does not detract from the appearance of the Property and as does not affect adversely the value or use of any other Unit or the Common Areas. The Association shall have no obligation regarding maintenance or care which is required to be accomplished by the Owners. Each Owner, and not the Association, shall be responsible to pay for all utility services (including, without limitation, both hookup and installation fees and periodic charges) which are separately charged, billed, and/or metered to his Unit by governmental or quasi-governmental authorities or by public or private utility companies. In addition, each Owner shall pay the Association reasonable hookup and use fees for utility services provided to his Unit by the Association.

2. ***Operation and Maintenance by Association.*** The Association shall provide for such maintenance and operation of the Common Areas (including, without limitation, utility lines and facilities owned or used by the Association) as may be reasonably necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive, and generally in good condition and repair. The Association shall be obliged to maintain and operate the Common Areas. Nothing herein shall be construed as a waiver of any right of the Association to obtain contribution and/or reimbursement from any third-party (other than Declarant). In the event that Declarant is jointly using a utility line, drainage structure or similar facility to service property not included in the Project, the Association shall maintain and operate such line, structure, or facility and Declarant shall reimburse the Association only for such incremental costs of such maintenance and operation which directly result from the Declarant's use thereof.

3. ***Professional Management.*** Unless approval for self management is obtained pursuant to Paragraph (d) of Section 5 of Article XI hereof, the Association shall carry out through a professional manager those of its functions which are properly the subject of delegation. The professional manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement entered into prior to the termination of the Class B membership shall provide that the Association, with or without cause and without payment of any termination fee or being subject to any penalty, may terminate same upon not in excess of ninety (90) days written notice to the other party thereto.

ARTICLE VII. USE AND BUILDING RESTRICTIONS

1. ***Use of Common Areas, Open Space Area.*** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions contained herein. No automobile or other vehicle shall be parked at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from its various parts. All portions of the Open Space Area shall be and remain undisturbed open space with no building or structure constructed thereon without the prior written approval of Washington County, or other entity to which it has been conveyed. The Open Space Area may be used only for recreational uses consistent with the undisturbed natural state of the Open Space Area. Camping is not permitted at any time within any of the Common Areas.

2. ***Use of Units.*** Unless otherwise designated by Shadowhawk Townhomes Site Plan, all Units are restricted to use as multiple family residential housing as defined in Article I Section 9, provided, however, that a portion of a Living Unit can be used to conduct a business or profession of: (1) such use as is approved by all appropriate governmental and quasi- governmental bodies having jurisdiction over such matters; (2) such use as is approved by the Shadowhawk Townhomes Design Review Committee (as said Committee is provided for hereafter); (3) such use as is approved by Declarant; and (4) such use as is of a type traditionally conducted in a residence. Under no circumstances shall a Unit be used for other than a residence. No Unit shall be used, occupied, or altered in violation of law, so as to detract from the appearance or value of any other Unit, or the Common Areas, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas. No aluminum foil, newspapers, or any other similar materials may be used to cover the windows in any Unit or other structure.

3. ***Recreational Vehicles.*** Boats, trailers, recreational vehicles and campers shall be governed by Board policy.

4. ***Animals.*** No animals other than small household pets (dogs, cats, birds, hamsters, fish, etc.) shall be kept or allowed within any part of the Common Areas. Whenever a permitted animal is allowed to leave a Unit it shall be either on a leash or in a cage. No animals of any kind shall be raised, bred, or kept for any commercial purpose. The Association shall promulgate reasonable rules and regulations concerning the use of, or damages to, the Common Areas by animals and the liability of individual Owners for such damage. Notwithstanding the foregoing, the Association shall have the right to prohibit maintenance of any animal which constitutes a nuisance to any other owner. ***IT IS UNLAWFUL FOR THE OWNER OF ANY PET NOT TO IMMEDIATELY REMOVE EXCREMENT DEPOSITED BY THE PET ON ANY COMMON AREA.***

5. ***Nuisances.*** No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise there from so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property or to the occupants thereof.

6. ***Unsightly Articles.*** No unsightly articles as defined below shall be permitted to remain so as to be visible from any other Unit or Common Areas. Refuse, garbage and trash shall

be kept at all times in a covered, noiseless container, and any such container shall be kept within an enclosed structure or appropriately screened from view. No metals, bulk materials, scrap, refuse, trash or non-operable vehicles shall be kept, stored or allowed to accumulate on any area except within an enclosed structure or when appropriately screened from view,

7. **Signs.** No sign of any kind shall be displayed to the public view without the approval of the Shadowhawk Townhomes Design Review Committee, except such signs as may be erected by Declarant for permanent identification of the Project or used by Declarant in connection with the development and sale of Units and except such signs of customary and reasonable dimensions as may be displayed on a Unit for sale or lease. Except as aforesaid, display of any "for sale" or "for lease/rent" sign more than two (2) feet by one and one-half (1 1/2) feet shall require the prior written approval of the Shadowhawk Townhomes Design Review Committee. Sign policies will be set from time-to-time by the Board.

8. **No Hazardous Activities.** No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

9. **Motorbikes.** All motorcycles, trail bikes, three-wheel and four-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are specifically prohibited from all roads and Common Areas.

10. **Exception for Developer.** Notwithstanding the restrictions contained in this Article VII, for a five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah, Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, or sales efforts, or to facilitate the improvement of the Common Areas, or the improvement and/or sale of all Units owned by Declarant.

ARTICLE VIII. ARCHITECTURAL CONTROL

Shadowhawk Townhomes Design Review Committee. The Board of Trustees of the Association shall appoint a three-member Committee, the action of which shall be to insure that all Units and other improvements within the Project harmonize with existing surroundings and structures and comply with the requirements set forth in this Article VII. The Committee need not be composed of Owners. If such a Committee is not so appointed, a majority of the Board of Trustees of the Association itself shall perform the duties required of the Committee.

ARTICLE IX. ASSOCIATION INSURANCE

1. **Fidelity Bonds.** The Association may elect to maintain in force and pay the premiums for blanket fidelity bonds for all officers, directors, members, and employees of the Association and for all other persons handling or responsible for the bids of or administered by the Association. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, directors, employees, and agents handling or responsible for bonds of, or administered on

behalf of, the Association. The total amount of any fidelity bond coverage shall be based upon best business judgment and shall not be less than a sum equal to three month's aggregate assessments on all Units plus reserve funds. The bonds shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving similar terms or expressions; (3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, directors, employees, and agents) shall be paid by the Association as a common expense; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association.

2. ***Liability Insurance.*** The Association shall maintain in force and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas and Facilities, public ways in the Project exclusive of dedicated public streets, if any, and commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least one million dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas and Facilities, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverage under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to, host liquor liability, contractual and all written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. Such policy shall, by its terms, provide for "severability of interest: or shall contain a specific endorsement to preclude the insurer's denial of an Owner's claim because of the negligent acts of the Association or any Member thereof, and shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days prior written notice to the Association.

3. ***General Requirements Concerning Insurance.*** Each insurance policy maintained pursuant to the foregoing Sections 1 and 2 shall be in accordance with and consistent with local and State of Utah insurance law and shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Key Rating Guide of Class VI or better. No such policy shall be maintained where: (i) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (ii) the Policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds. The provisions of this Article IX does not limit the power or authority of the Association or any Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association or such Owner may deem appropriate from time to time.

ARTICLE X. DESTRUCTION OR CONDEMNATION OF COMMON AREAS

1. **Definitions.** The provisions of this Article X shall apply with respect to the destruction or condemnation of all or any part of the Common Areas. As used in this Article, each of the following terms shall have the meaning indicated:

(a) **Destruction.** "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Common Areas or any part thereof, the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value. "Partial Destruction" shall mean any other damage or destruction to the Common Areas or any part thereof.

(b) **Condemnation.** "Substantial Condemnation" shall exist whenever a complete taking of the Common Areas or a taking of part of the Common Areas has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(c) **Restoration.** "Restoration" in the case of any damage or destruction, shall mean restoration of the Common Areas in accordance with the Declaration, the Plat, and the original plans and specification for the Common Areas to a condition the same or substantially the same as the condition in which the Common Areas existed prior to the damage or destruction concerned; in the case of condemnation, shall mean restoration of the remaining portion of the Common Areas to an attractive, sound, and desirable condition. Any "Restoration" not in accordance with the Declaration, the Plat, and the original plans and specifications for the Common Areas shall require the consent of Eligible Mortgages holding Mortgages on at least fifty-one percent (51%) of the Units which are then subject to mortgages held by Eligible Mortgagees.

(d) **Restored Value.** "Restored Value" shall mean the value of the Common Areas (excluding raw land value) after Restoration.

(e) **Estimated Costs of Restoration.** "Estimated Costs of Restoration" shall mean the estimated costs of restoration.

(f) **Available Funds.** "Available Funds" shall mean any proceeds of insurance, condemnation, awards, payments in lieu of condemnation, and any uncommitted funds of the Association, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of the insurance proceeds legally required to be paid to any party other than the Association or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee.

2. **Determination by Board of Trustees of the Association.** Upon the occurrence of any damage or destruction to the Common Areas or any part thereof, or upon a complete or partial taking of the Common Areas under eminent domain or by grant or conveyance in lieu thereof, the Board of Trustees of the Association shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value. In making such determination the Board of Trustees of the Association may retain and rely upon one or more qualified appraisers or other professionals.

3. **Restoration of Common Areas.** Restoration of the Common Areas shall be undertaken by the Association promptly without a vote of the owners in the event of Partial Destruction or Partial Condemnation, and shall also be undertaken in the event of Substantial Destruction of Substantial Condemnation unless the failure to make Restoration is consented to by Members collectively holding at least sixty-seven percent (67%) of the total votes of the Association and is consented to by Eligible Mortgagees holding Mortgages on at least fifty-one percent (51%) of the Units which are then subject to Mortgages held by Eligible Mortgagees. Within thirty (30) days after the Board of Trustees of the Association has determined that Substantial Destruction of Substantial Condemnation exists, the Association shall send to each Owner and Eligible Mortgagee a written description of the destruction or condemnation involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall notice a meeting of the Members in accordance with the applicable provisions of this Declaration and the Articles to determine the preferences of the Members regarding Restoration. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Association exceed the actual cost of Restoration when Restoration is undertaken, the excess shall be divided into as many equal shares as there are Units in the Project with one of such shares be paid and distributed to the Owners of each Unit. In the event the actual cost of Restoration exceeds Available Funds, all of the Units shall be equally assessed for the deficiency.

4. **Lack of Restoration.** Unless Restoration is accomplished in accordance with the foregoing Section 3, the Association shall take such action as is necessary make the remaining Common Areas safe for the occupants and Owners of the Project defray the costs thereof from Available Funds. In the event such Funds are insufficient for such purposes, the Owners of all Units shall be equally assessed for the deficiency. Any remaining Available Funds shall be divided into as many equal shares as there Units in the Project with one of such shares being paid and distributed to the Owner each such Unit. Payment to any Owner whose Unit is the subject of a Mortgage shall made jointly to such Owner and the interested Mortgagee.

5. **Authority of Association to Represent Owners in Proceedings to Condemn or to Restore.** The Association, as attorney-in-fact for each Owner, shall represent all the Owners and the Association in any condemnation proceeding or in negotiation settlements, and agreements with the condemning authority for the acquisition of all any part of the Common Areas and Facilities. The award in any condemnation proceeding, the proceeds of any settlement related thereto, and the proceeds, of insurance on the Common Areas shall be payable to the Association for the use benefit of the Unit Owners and their Mortgagees as their interests may appear. The Association, as attorney-in-fact for each Owner, shall have and is hereby granted power and authority to restore the Common Areas whenever Restoration is undertaker provided in Section 3 of this Article or when the Common Areas are made safe provided in Section 4 of this Article. Such authority shall include the right and power to enter into any contracts, deeds, or other instruments which may be necessary appropriate.

ARTICLE XI. MISCELLANEOUS

1. **Enforcement.** The Declarant, the Association, and any aggrieved Unit Owner shall have a right of action either, at law or in equity, against the Declarant, the Association, or any Unit Owner for any failure by such person or entity to comply with this Declaration, the Plat, the Articles, or the provisions of any rules, regulations, agreements, instruments, supplements, amendments, or determinations contemplated by this Declaration, the Plat, or the Articles. Failure by

the Declarant, the Association or any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. **Notices.** Any notice required or permitted to be given to any Owner, Member, Eligible Mortgagee, or Eligible Insurer or Guarantor under the provisions of this Declaration or the Articles shall be deemed to have been properly published if mailed postage prepaid to the person or entity which appears as the Member, Owner, Eligible Mortgagee, or Eligible Insurer or Guarantor of the Unit or Mortgage concerned, at the latest address for such person or entity appearing, in the applicable lists of the Association at the time of mailing.

3. **Rules and Regulations.** The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.

4. **Unanimous Written Consent in Lieu of Vote.** In any case in which the Declaration requires for authorization or approval of a transaction or matter the accent or effective vote of a stated percentage of the votes of the Association, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from every Member entitled to cast a vote. The following additional provisions shall govern any application of this Section 4:

(a) All necessary consents must be obtained prior to the expiration of one hundred eighty (180) days after the first consent is given by any Member.

(b) Any change in ownership of a Unit which occurs after consent has been obtained from Member having an interest therein shall not be considered or taken into account for any purpose.

5. **Amendment.** Except as provided in and/or subject to the terms of items (a) through (d) below, a majority of the votes which Members present in person or represented by proxy are entitled to cast at a meeting of the Members of the Association shall be required and shall be sufficient to amend this Declaration, the Plat, or the Articles. Written notice setting forth the purpose of such meeting and the substance of the proposed amendment shall be sent to all Members at least ten (10) but not more than fifty (50) days prior to the meeting date. The quorum required at such meeting shall be as set forth in Section 5 of Article V of this Declaration. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument the Association shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgages is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

(a) Declarant shall have the right unilaterally to amend and supplement this Declaration in conjunction with any additions to the Project, but only in the manner and to the extent, provided for in the article XI of this Declaration.

(b) Until the Class B membership ceases, no amendment to the Plat, to Article VIII of this Declaration or to any provision of this Declaration or the Articles which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection, or

control accorded to Declarant (in its capacity as Declarant) shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

(c) The vote of at least sixty-seven percent (67 %) of the total votes in the Association and the consent of Eligible Mortgagees holding Mortgages on at least sixty-seven percent (67 %) of the Units which are then subject to Mortgages held by Eligible Mortgagees shall be required for any amendment which would terminate the legal status of the Project.

(d) The vote of at least sixty-seven percent (67%) of the total votes in the Association and the consent of Eligible Mortgagees holding Mortgages on at least fifty-one percent (51%) of the Units which are then subject to Mortgages held by Eligible Mortgagees shall be required to add to or amend any material provision of this Declaration, Plat, or the Articles which establishes, provides for, governs, or regulates any of the following: (i) voting; (ii) assessments, assessment liens or subordination of liens, (iii) reserves for maintenance, repair, and replacement of the Common Areas and Facilities; (iv) insurance for fidelity bonds; (v) rights to use the Common Areas and Facilities; (vi) responsibility for maintenance and repair of the several portions of the Project; (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (viii) the boundaries of any Unit; (ix) the interests in the Common Areas and Facilities or Limited Common Areas; (x) convertibility of Units into Common Areas or of Common Areas into Units; (xi) leasing of Units; (xii) imposition of any rights of first refusal or similar restrictions on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit; (xiii) any provisions which are for the express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and (xiv) the requirement that the Project be professionally managed rather than self-managed. An addition or amendment shall not be considered material for purposes of this Paragraph (d) if it is for the purpose of correcting technical errors, or for clarification only. Any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration, the Plat, or the Articles (or to approve a decision of the Association with respect to the nature of Restoration under Paragraph (c) of Section I of Article X hereof or a decision not to undertake Restoration pursuant to Section 3 of Article X hereof) is mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association and who does not deliver to the Association a negative response within thirty (30) days from the date of such mailing shall be deemed to have approved such request.

The vote and consent requirements set forth in the foregoing Paragraph (d) of this Section shall not be applicable to additions or amendments to this Declaration, the Plat, or the Articles which implement a decision concerning whether or not Restoration of the Common Areas should be undertaken or concerning the nature of such Restoration in accordance with the provisions of Sections 1 through 5 of Article X hereof in the event of Partial or Substantial Destruction or Condemnation and comply with Sections 1 through 3 of Article XI hereof. In addition, the granting by the Association of any permit, license, or easement for utility, or similar purposes pursuant to the right and authority of the Association set forth in Paragraph (c) of Section 4 of Article IV hereof, shall not require an addition or amendment to this Declaration, the Plat, or the Articles and shall not be restricted in any way by the provisions and requirements of this Section 5.

6. ***Mortgagee Protection.*** The lien of claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before that date such assessments or charges become due. In the event that the State of Utah should enact any law which would allow a lien for unpaid assessments or

charges to survive foreclosure or exercise of a power of sale, all such assessments and charges, including made due and payable to the Association on a monthly basis and the lien for any fees, late charges, fines, or interest that may be levied by the Association in connection with such unpaid assessments or charges shall be deemed subordinate to the Mortgage on the Unit upon which such assessments or charges are levied.

(a) The lien or claim against a Unit for such unpaid assessments or charges shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such lot of the exercise of a power of sale available there under shall extinguish a subordinate lien for such assessments or charges which became payable prior to such sale or transfer. Nevertheless, any such unpaid assessments or charges which are extinguished in accordance with the foregoing sentence may be reallocated and assessed to all Units as common expenses of the Association. Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit from the lien of, any assessments or charges becoming due thereafter.

(b) The Association shall make available to Owners, to lenders, and to holders, insurers, or guarantors of any mortgage current copies of this Declaration, the Plat, the Articles, any rules concerning the Project, and the books, records, and financial statements of the Association. "Available," as used in this paragraph, shall mean available for inspection upon request during normal business hours or under other reasonable circumstances.

(c) Upon written request to the Association by the holder, insurer, or guarantor of a Mortgage, which request identifies the name and address of such holder insurer or guarantor and the address of the Unit encumbered by the Mortgage held or insured by such holder, insurer or Guarantor (as the case may be), shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(i) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Mortgagee or such Eligible Insurer or Guarantor.

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

(iii) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(iv) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Sections 1 and 3 of Article X and the immediately foregoing Section 5 of this Article.

(d) All leases or rental agreements for the Unit shall be in writing and specifically subject to the provisions, restrictions and restrictions of this Declaration, the Plat, and the Articles. No Unit may be leased or rented for a period of less than thirty (30) days unless so authorized by the Board of Trustees of the Association. The Association shall not create or enforce any other restriction relating to the term of a lease or rental agreement of any Unit in the Project.

7. *Indemnification.*

(a) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Trustee or officer of the Association against expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he believed to be in and not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he believed to be in and not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, shall not, of itself, create a presumption that the person had reasonable cause to believe that his conduct was unlawful.

(b) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that said person is or was a Trustee or officer of the Association against expenses (including attorney fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he believed to be in and not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or misconduct in the performance of his duty to the Association, unless and only the extent that the court in which such action or suit was brought shall determine upon application that, despite the education of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) The following provisions shall govern and apply to the right of indemnification set forth in this Section 7:

(i) Any person seeking indemnification from the Association under Paragraph (a) of this Section as a result of being made a party to or being threatened to be made a party to any action, suit, or proceeding shall, within a reasonable time and before taking any significant or material action with respect to such action, suit or proceeding, notify the Association in writing with respect thereto and provide to the Association the opportunity to reasonably participate in such person's defense thereto and any settlement thereof. Failure to comply with the requirements of this Subparagraph (i) shall bar any claim of such person for indemnification by the Association.

(ii) To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Paragraph (a) or (b) of this Section, or in defense of any claim, issue, or other matter therein, he shall be indemnified against expenses (including attorneys fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Paragraph (a) or (b) shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Paragraph (a) or (b). Such determination shall be made either by the Board of Trustees of the Association by the affirmative vote of at least a

majority of the disinterested Trustees, or by the Members by the affirmative vote of at least a majority of the total votes of the Association at any meeting duly called for such purpose.

(iii) Expenses incurred in defending a civil or criminal action, suit or proceeding as contemplated in Paragraphs (a) and (b) may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a determination by the Board of Trustees of the Association by the affirmative vote of at least a majority of the disinterested Trustees and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by Paragraphs (a) and (b).

(iv) The indemnification provided for by Paragraphs (a) and (b) shall not be deemed exclusive of any other rights to which those persons indemnified may be entitled under any agreements, by a vote of disinterested Members or Trustees, or otherwise, as to action in such persons' official capacity. The indemnification authorized by Paragraphs (a) and (b) shall apply to all present and future Trustees and officers of the Association and shall continue as to such persons who cease to be Trustees or officers of the Association and shall inure to the benefit of the heirs and personal Representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

(v) The Association shall purchase and maintain insurance on behalf of any person who was or is a Trustee or officer of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

8. ***Protection of Storm Water Retention Areas and Structures.*** Declarant, Owners, or Mortgagees shall not have the authority to change, by any vote, or by alienation, transfer sale, or otherwise, the use of the areas and structures designed to control or retain storm water runoff unless the consent of the Flood Control Division of Washington County has first been obtained in writing.

9. ***Declarant's Rights Assignable.*** All of the rights of Declarant under this Declaration may be assigned, transferred, or encumbered either by operation of law or through a voluntary conveyance, transfer, encumbrance, or assignment.

10. ***Interpretation.*** 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 construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

11. ***Covenants to Run with Land.*** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of Living Unit shall comply with, and all interests in all Units and in the Common Areas shall be subject to, the terms of

this Declaration and the provisions of any rules, regulations, agreements, instruments, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit 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.

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

13. **Interpretation of this Declaration, Bylaws, and Articles of Incorporation.** Except for judicial construction, the Board of Directors shall have the exclusive right to construe and interpret the provisions of this Declaration, Bylaws, and Articles of Incorporation. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Directors construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by these documents and the provisions hereof.

Executed by Declarant on this 5 day of August, 2013

Garr & Lyle, LLC

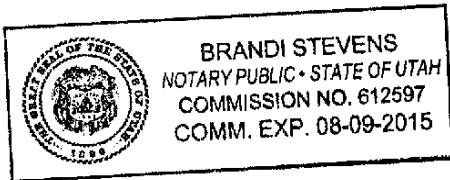
By: [Signature]
[Signature]

Its: managing members

STATE OF UTAH)
) :SS
COUNTY OF WASHINGTON)

SUBSCRIBED AND SWORN TO before me this 5 day of August, 2013.

S
E
A
L



[Signature]
NOTARY PUBLIC
Residing at St. George, Utah
8-9-2015 Commission Expiration

EXHIBIT A

Tax Id Number: SG-6-2-26-133

Beginning at a point being South 00°44'13" West, 1717.06 feet along the Section Line and East 1062.71 feet from the North Quarter Corner of Section 26, Township 42 South, Range 16 West, Salt Lake Base and Meridian, and running thence North 77°52'37" West, 25.49 feet; thence Northwesterly 52.30 feet along an arc of a 100.00 foot radius curve to the right (center bears North 12°07'23" East, long chord bears North 62°53'39" West, 51.71 feet with a central angle of 29°57'56"); thence North 47°54'41" West, 170.56 feet; thence Northerly 100.47 feet along an arc of a 75.00 foot radius curve to the right (center bears North 42°05'19" East, long chord bears North 09°31'59" West, 93.13 feet with a central angle of 76°45'25"); thence North 28°50'44" East, 43.78 feet; thence Northerly 47.29 feet along an arc of a 125.00 foot radius curve to the left (center bears North 61°09'16" West, long chord bears North 18°00'27" East, 47.01 feet with a central angle of 21°40'35"); thence Northeasterly 29.21 feet along an arc of a 20.00 foot radius curve to the right (center bears South 82°49'51" East, long chord bears North 49°00'42" East, 26.68 feet with a central angle of 83°41'05"); thence South 89°08'46" East, 178.87 feet; thence South 00°50'30" West, 250.02 feet; thence South 12°15'13" West, 84.91 feet to the point of beginning.