



\*W2428265\*

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

***The Cove on 40<sup>th</sup>***

E# 2428265 PG 1 OF 17  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
05-AUG-09 346 PM FEE \$51.00 DEP SPY  
REC FOR: THE COVE ON 40TH

**RECITALS**

Whereas, the undersigned (hereafter "Declarant") is the owner of certain real property located in the city of South Ogden, Weber County, State of Utah, such property being more particularly described in Exhibit A attached here to and made a part hereof (hereafter "Property"); and

Whereas, It is the desire and the attention of the Declarant to construct townhomes and sell and convey the same to various purchasers, and to convey common subject to certain protective covenants, conditions and restrictions as hereinafter set forth in this Declaration of Covenants, Conditions and Restrictions (hereafter "Declaration") area to an association in which the townhome owners will be members.

**DECLARATION**

NOW THEREFORE, Declarant hereby declares that all of the Property described in Exhibit A shall be held, sold, used, occupied, and conveyed subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the plat of The Cove on 40th recorded concurrently herewith, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These covenants, conditions and restrictions shall run with the Property and shall be binding upon all parties having or acquiring any rights, title or interest in the Property or any portion thereof, and shall inure to the benefit of each such party. The acceptance of any deed to or conveyance of any Unit, part or portion of the Property by the grantees named therein or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Declarant and with one another to accept, hold, improve, use and convey the property described and conveyed in such deed or conveyance subject to this Declaration.

**ARTICLE 1 – DEFINITIONS**

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1.1. Association means The Cove on 40th Homeowners Association, its successors and assigns.

Section 1.2. Board of Directors means the governing body of the Association.

Section 1.3. Common Area means all real property (including the improvements thereto) owned or hereafter acquired by the Association for the common use and enjoyment of the Members and includes that portion of Property owned by the Association, shown on the Plat as Common Area.

Common Area is dedicated to the common use and enjoyment of the Owners, and is not dedicated for the use of the general public, except as specifically determined by the Directors. Specifically exempted from Common Area are Units and dedicated public streets that are identified on the Plat. Common Area shall also include all land in which the Association has an easement right.

Section 1.4. Declarant means the owner of the underscribed real property described in Exhibit A.

Section 1.5. Declaration means this instrument, and any amendments thereto.

Section 1.6. Entire Membership means all Members, regardless of class of membership.

Section 1.7. Unit means a separately numbered living descriptions on the Plat, but specifically excludes the Common Areas.

Section 1.8. Member means every person or entity who holds membership in the Association. Every Member is an Owner, and every Owner is a Member.

Section 1.9. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

Section 1.10. Owner means the entity, person, or group of persons owning fee simple title to any Unit which is within the Properties. Regardless of the number of parties participating in ownership of each Unit, the group of those parties shall be treated as one "Owner."

Section 1.11. Plat means the subdivision plat recorded herewith entitled "The Cove on 40<sup>th</sup>" consisting of one sheet, prepared and certified by Ensign Engineering, a Utah Registered Engineering and Surveying firm.

Section 1.12. Property or Properties means that certain real property described on Exhibit A hereto, and such additions and annexations thereto as may hereafter be subjected to this Declaration.

Section 1.13. Directors means the members of the governing body of the Association.

## **ARTICLE 2 - PROPERTY RIGHTS**

**Section 2.1. Title to the Common Area.** Declarant will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Unit, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association covenants to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and condition at all times and to operate the Common Area at its own expense in accordance with high standards. The Declarant warrants the improvements to be of good materials and workmanship for a period of one year from the date of conveyance of the Common Area to the Association. In the event that defects in materials or workmanship occur within such one year period, the Declarant, at its sole option, shall either repair or replace the defective improvements. The Association further agrees that, other than the immediately preceding limited warranty, the property is conveyed **"AS IS" AND WITHOUT WARRANTY WHATSOEVER, INCLUDING ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.**

**Section 2.2. Owners' Easements of Enjoyment.** Every Owner has a right and easement of use and enjoyment in and to the Common Area. This easement is appurtenant to and passes with the title to every Unit, subject to:

(a) The right of the Association to charge reasonable assessments for the use of the service of the Association or provided upon the Common Area.

(b) The right of the Association to limit the number of guests of Members using the Common Area.

(c) The right of the Association to establish rules and regulations, including for the use of the Common Area and to impose reasonable sanctions for violations of published rules and regulations.

(d) Delegation of the Association of Use. Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, guests or contract purchasers who reside on the property.

(e) Books and Records Available for Inspection. The Committee or Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, By-Laws, Articles of Incorporation, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and Association. The term "Available", as used in this Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its' photocopying and service charges incurred in making the inspection and photocopying available.

(f) The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities by a similar Association in consideration for use of the Common Areas and facilities of the other Association, or for cash consideration;

(g) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.

(h) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

(i) The terms and conditions of this Declaration.

(j) The right of the Association, through its Directors, to adopt rules and regulations concerning use of the Common Area.

(k) The right of the Declarant to take such actions as it may deem necessary so long as the expansion of the Project shall not be complete, including granting leases, easements, and modifying the improvements and design of the Common Area.

**Section 2.3. Delegation of Use.** Owners may delegate, in accordance with the Bylaws of the Association, their right of enjoyment to the Common Area and facilities to the members of his family, his tenants, guests or contract purchasers who reside on the property. Damage caused to

the Common Area and facilities, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by the Member, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area and facilities shall be an assessment charged to the Unit Owner.

**Section 2.4. Rules.** The Board of Directors shall have the authority to promulgate rules and regulations for the governance of the Properties, and persons within the Properties. These rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Members.

**Section 2.5. Ownership** Each unit is owned in fee simple by the Owner.

### ARTICLE 3 -- MEMBERSHIP AND VOTING RIGHTS

**Section 3.1. Formation of Association.** The Association shall be a nonprofit Utah corporation charged with the duties and invested with the powers prescribed by law and as set forth in its Bylaws and this Declaration. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**Section 3.2. Membership.** Every Owner is a Member of the Association. The term "Owner" includes contract purchasers, but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Unit ownership. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity.

**Section 3.3. Voting Rights.** The Association shall have one class of voting membership. The members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any unit.

**Section 3.4. Power of the Association.** Each Owner agrees that the Association has all the powers granted to it by this Declaration and by the Utah Nonprofit Corporation and Co-operative Association Act and any amendments thereto or replacements thereof. Such powers shall include, without limitation, all of the following:

- (a) levying Assessments against Owners;
- (b) imposing a lien on Units for any unpaid or uncollected Assessments or penalties, and foreclosing any such liens;
- (c) enforcing any deed restrictions and covenants;
- (d) acquiring, holding, owning, leasing, mortgaging and disposing of property.
- (e) adopting rules and regulations;
- (f) defending, prosecuting or intervening in litigation on behalf of all Members;
- (g) borrowing money for Association purposes and the right to pledge future income in order to secure such borrowings.
- (h) exercising any other right, power or privilege given to it expressly by this Declaration, the Articles and By-laws, or by law or by the operative documents of

and rules and regulations adopted by the Association, and every other right, power or privilege reasonably to be implied from the existence of any right, power or privilege given to it herein or reasonably necessary to effectuate any such right, power or privilege.

#### **ARTICLE 4 - FINANCES AND OPERATIONS**

**Section 4.1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant and each subsequent Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association: (a) monthly assessments or charges; (b) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (c) any other amount or assessment levied or charged by the Association or Board of Directors pursuant to this Declaration; and (d) interest, costs of collection and reasonable attorney fees, as hereinafter provided. All such amounts shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

**Section 4.2. Purpose of Assessments.** The assessments levied by the Association shall be used: (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties; and (b) for the improvement and maintenance of Properties, services, and facilities devoted to this purpose. The assessments must provide for, but are not limited to, the payment of taxes on Association Property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve accounts for repair, maintenance and replacement of those Common Areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Board of Directors shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Board of Directors, for the payment of other charges, including, without limitation, maintenance, management, and water charges.

**Section 4.3. Maximum Monthly Assessment.** The initial amount of the monthly Assessment shall be set by the Declarant. This initial amount shall be enough to cover the monthly obligations of the services and maintenance of the common area. This amount will not exceed One Hundred Dollars (\$100.00) per Unit. The monthly assessment may be increased each year based on seventy percent (70%) vote of the Association.

**Section 4.4. Special Assessments for Capital Improvements.** In addition to the monthly assessments, the Board may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Area structures, fixtures and personal property related thereto. If there is no Class B membership, special assessments must have the assent of seventy percent (70%) of the votes of the Entire Membership authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

**Section 4.5. Additional Assessments.** In addition to the monthly assessments and special

assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to Common Areas to the City of South Ogden ("City") in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said 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.

**Section 4.6. Notice and Quorum for any Action Authorized Under Sections 4.3 and 4.4.**

Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections 4.3 or 4.4 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast seventy percent (70%) of all the votes of the Entire Membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 4.7. Uniform Rate of Assessment: Periodic Assessment.** Both monthly and special assessments must be fixed at a uniform rate for all Units; provided, however, that no assessments shall accrue against the Declarant so long as the Declarant has Class B membership. Monthly, special and additional assessments may be collected on a monthly or quarterly basis, as the Directors determine. **Section 4.8. Date of Commencement of Monthly Assessments: Due Dates.** The monthly assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the Common Area. The first monthly assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days prior to the commencement of each new assessment period, the Directors shall send or cause to be sent a written notice of the monthly assessment to each Owner subject thereto. This notice shall not be a prerequisite to the validity of the assessment. In the absence of a determination by the Directors as to the amount of said assessment, the monthly assessment shall be an amount equal to 90% of the maximum monthly assessment determined as provided above. The assessment due dates shall be established by the Directors. The Directors may provide for the payment of monthly and special assessments in equal installments throughout the assessment year. The Board shall prepare a roster of the Properties and the assessments applicable thereto at the same time that it sets the amount of the monthly assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Unit has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

**Section 4.8. Effect of Non-Payment of Assessment - Remedies of the Association.** Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Directors shall determine appropriate) until paid. In addition, the Directors may assess a late fee for each delinquent installment which shall not exceed ten percent (10%) of the installment. The Directors may, in the name of the Association: (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment; (b) may foreclose the lien against an Owner's Unit in accordance

with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law; and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Owner. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees, together with an amount for the reasonable rental for the Unit from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security. A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the Unit of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were a beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for purposes of the power of sale foreclosure. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of the Unit.

**Section 4.9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Unit or Owner from personal liability for assessments coming due after the Owner takes title or from the lien of such later assessments.

**Section 4.10. Books, Records and Audit.** The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Unit Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A Unit Owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

**Section 4.11. Exempt Property.** The following property subject to this Declaration is exempt from the assessments created herein:

- (a) All property dedicated to and accepted by any local public authority;
- (b) All Common Area;
- (c) All Units owned by Declarant.

#### ARTICLE 5 – INSURANCE

**Section 5.1. Casualty Insurance on Insurable Common Area.** The Association may insure any property, whether real or personal, owned by the Association, against liability, loss, damage or hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular monthly assessments made by the Association.

**Section 5.2. Replacement or Repair of Property.** In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Unit Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Unit Owners.

**Section 5.3. Liability Insurance.** The Directors shall obtain a comprehensive policy of public liability insurance covering all of the Common Area for at least \$500,000 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

**Section 5.4. Fidelity Insurance.** The Directors may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Directors shall seek a policy which shall: (a) name the Association as obligee or beneficiary, plus (b) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (c) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

**Section 5.5. Monthly Review of Policies.** All insurance policies shall be reviewed at least monthly by the Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the Property which may be damaged or destroyed.

#### **ARTICLE 6 - STATUS OF OWNERS: BOARD OF DIRECTORS**

**Section 1. Legal Status.** The Owners do not constitute an association or entity of any Kind. The sole legal entity created hereunder is the Association. The name of the Association shall be the name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suit shall be brought and defended by the Association, through the Board of Directors or office thereof on behalf of and as agents for the owners in the manner specified in this Declaration, the charter, the bylaws or by applicable law.

**Section 2. Management of Association and Property.** The management and maintenance of the Property and the business, property and affairs of the Association shall be managed by a Board of Directors as provided in this Declaration and its' articles and bylaws. All agreements and determinations with respect to the Property lawfully made or entered into by the Board of Directors shall be binding upon all of the Owners and their successors and assigns.

**Section 3. Board of Directors of the Association.** The Board of Directors (the "Board") of the Association shall consist of three (3) members, in accordance with the Articles and Bylaws. The term of a member shall be two (2) years. Until December 31, 2010, or until 60% of the Units have been sold and title transferred to Owners, whichever occurs first, the Declarant reserves the right



to appoint and remove all members of the Board and to exercise the powers and responsibilities otherwise assigned by the Declaration of the Association. By express written declaration, Declarant shall have the option to at any time turn over to the Association the total responsibility for electing and removing the members of the Board.

**Section 4. Authority and Duties.** The duties and obligations of the Board and rules governing the conduct of the Association shall be as set forth in the Articles of Incorporation and, the Bylaws of the Association as they may be amended from time to time.

**Section 5. Limited Liability of Board of Directors, etc.** Members of the Board and the officers, assistant officers, agents and employees acting in good faith on behalf of the Association:

- (1) Shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith;
- (2) Shall have no personal liability in contract to an Owner or any other person or entity, except under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such;
- (3) Shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith;
- (4) Shall have no personal liability arising out of the use, misuse or condition of the Property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

**Section 6. Formative Documents.** The Articles of Incorporation and the By-Laws of the Association are included as Exhibits "A" and "B" respectively to this Declaration, and are incorporated by reference as part of this Declaration.

#### **ARTICLE 7 - COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to have consented to be subject to these covenants and agrees to pay to the Association:

- (1) Monthly assessments or charges; and
- (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

All Owners, as a member of the Association, hereby covenant and agree, by acceptance of a deed to a townhome unit, to pay to the Association the Monthly Assessments, Special Assessments, and such other assessments and charges which may be established by the Association.

Assessments, together with interest, costs, and reasonable attorneys' fees, if unpaid or uncollected, shall be secured by a lien (the "Assessment Lien") on the Unit and shall be a continuing servitude and lien upon the Unit against which each such Assessment or charge is made.

The grantee of any Unit (i.e., purchaser or other transferee) shall be jointly and severally liable with his grantor (i.e., seller or other transferor) for all unpaid Assessments or other proper charges due the Association prior to, as well as subsequent to, the date of the recording of the conveyance without prejudice to the rights of said grantee to recover from grantor any Assessments paid. Notwithstanding the preceding, no Mortgagee shall be personally liable for any Assessment or other proper charges due the Association, except in the event such Mortgagee shall acquire title to the Unit through a foreclosure or deed in lieu of foreclosure or otherwise. Any Mortgagee who so acquires title also shall be liable for Assessments or other proper charges due the Association arising on or subsequent to the date such Mortgagee became the record owner of the Unit.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the property and for the improvement and maintenance of the utilities and common area, to include road maintenance and utility line maintenance, landscape maintenance, waterway maintenance, recreational facility maintenance, property liability insurance, Association employees wages, mailing costs and other related expenses incurred on behalf of the Association.

**Section 3. Monthly Assessments.** A Monthly Assessment shall be made against each Unit based upon an monthly budget approved by the Board for the purpose of paying Common Area expenses, cost center functions or services allocated to certain or all Units, including but not limited to, reserves for operating deficiencies, a fund for capital improvements or any other matters reasonably determined by the Board to be the subject of an Monthly Assessment. Units owned by Declarant shall be liable for monthly assessments when the Final Subdivision Plat for the Phase in which the Units are located has been recorded, and seventy percent (70%) of the Units in that Phase have been sold. The Monthly Assessment may include any and all assessments made by the Association. The Board shall prepare an monthly budget estimate for Common Services and administration of the Association and fix the amount of the Monthly Assessment based upon its estimate. Such monthly budget shall be prepared and approved by the Board at least thirty (30) days in advance of each Monthly Assessment period.

**Section 4. Special Assessments for Capital Improvements** In addition to the Monthly Assessment authorized above, the Association may levy, in any Assessment period, a Special Assessment for the purpose of defraying, in whole or in part, any special assessment of the Association, the cost of any construction, reconstruction, repair or replacement of a capital improvement, or for other extraordinary expenses.

**Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast seventy percent (70%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be at least one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6. Uniform Rate of Assessment.** Both monthly and special assessments must be fixed at a uniform rate for all Units and may be collected on an monthly basis. Each Unit will be assessed no more than 1/10th of the actual cost incurred for common area and special assessments.

**Section 7. Date of Commencement of Monthly Assessments: Due Dates.** The monthly assessments provided for herein shall commence as to all Units subject to assessment on the first day of the month following the issuance, by Weber County, of the first occupancy permit for a Unit within The Cove on 40th . The first monthly assessment for Units Purchased thereafter shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the monthly assessment again for each Unit at least thirty (30) days in advance of each monthly assessment period. Written notice of the monthly assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid.

**Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.** Any Assessment or charge or installment thereof not paid when due shall be deemed delinquent and, in the discretion of the Board, may bear interest from and after the due date until paid at a rate set by the Association, but in no event greater than applicable law. The delinquent Member also shall be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting a delinquent Assessment. The Board may also record a Notice of Delinquent Assessment or charge against any Unit as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Board, shall set forth the amount of the unpaid Assessment, the name of the delinquent Owner and a description of the Unit and shall, upon recording, constitute an Assessment Lien. The Board may, but shall not be required to, establish a fixed fee to reimburse the Association for the Association's cost in preparing and recording such notice, processing the delinquency and recording a release of said lien, which fixed fee shall be treated as part of the delinquent Assessment secured by the Assessment Lien. The Association may bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against said Owner's Unit. No Owner may waive or otherwise avoid liability for the Assessments provided for herein by non-use of the benefits derived from Assessments or abandonment of his Unit. No delinquent Member shall be entitled to vote on any Association matters until the assessment due, including any interest and/or other costs, shall have been paid in full. Where assessments due from any Member are more than six (6) months delinquent, the Association may temporarily cut off any or all Association services or benefits to such Unit, until all delinquent assessments are fully paid.

**Section 9. Subordination of the Lien to Mortgages.** A lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage or purchase contract. Sale or transfer of any Unit shall not affect the assessment lien.

**Section 10. Common Area Assessment.** There shall be set aside not less than ten percent (10%) of the regular monthly assessment for the sole purpose of maintaining the Utility Systems and Common Area and as approved by the Association. The Association shall have the obligation of clearing bushes and shrubs at the intersection of Sweetwater and Utah State Highway 226 for the purpose of improving and/or maintaining the sight distance.

**Section 11. Insurance.** The Association shall obtain and keep in full force and effect the following insurance coverage:

(a) Property and fire insurance with extended coverage and standard all-risk endorsements, including vandalism and malicious mischief, on Property Conveyed by the Declarant or any other Association Property. The total

amount of insurance, after application of deductibles, shall be 100% of the replacement value of the insured property exclusive of land, foundations and other items normally excluded from property policies.

(b) Public liability and property damage insurance, including medical payments insurance, in an amount to be determined by the Board, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the ownership, operation, maintenance or other use of Association Property. This policy shall also cover operation of automobiles or other vehicles or equipment on behalf of the Association. The minimum public liability insurance to be carried by the Association shall be Five Hundred Thousand Dollars (\$500,000) and limits of coverage shall be reviewed annually to determine whether the Association should carry public liability insurance in excess of this minimum amount.

(c) Coverage of any person(s) who is or was a member of the Board, officer, employee, fiduciary or agent of the Association against any liability asserted against or incurred by such person in that capacity or arising from such person's status as a director, officer, employee, fiduciary or agent, whether or not the Association would have the power to indemnify such person under the applicable provisions of any State of Utah statute, and against libel, slander, false arrest, invasion of privacy and errors and omissions and other forms of liability generally covered in officers and directors liability policies.

#### **ARTICLE 7 - USE RESTRICTIONS**

**Section 7.1. Construction, Business and Sales.** Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Units during the period of construction and sale of said Units and upon such portion of the premises as Declarant deems necessary including but not limited to a business office storage areas, construction yard, signs, model units and sales offices.

**Section 7.2. Building Location.** All buildings shall be located on all Units so as to comply with any requirements noted on the Plat and so as not to be in violation of South Ogden City ordinances with respect to minimum setbacks. The above notwithstanding, in no event shall any portion of any building encroach upon any other Unit.

**Section 7.3. Care and Maintenance of Unit.** The Owner of each Unit shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times.

**Section 7.4. Nuisances.** No noxious or offensive activity shall be carried out on any Unit nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No Unit shall be used for any illegal purpose.

**Section 7.5. Signs.** No signs of any kind shall be displayed to the public view on any Unit except one sign of not more than one square foot for identification (numbering) purposes. One sign of

not more than two (2) square feet on each side may be used for advertising the Unit for sale or rent or identifying the home during construction.

**Section 7.6. Animals, Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Unit, except dogs, cats or other household pets, not exceeding two (2) of each, may be kept, provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the Owner's premises or on a leash under the handler's control.

**Section 7.7. Vehicles.** Motor vehicles that are inoperable shall not be permitted to remain upon any parking stall, driveway or the road adjacent to the complex thereto for a period of more than seventy-two (72) hours. No automobile, recreational vehicle, commercial vehicle, other motorized vehicle, or any portion thereof, shall be dismantled, rebuilt, serviced, repaired or repainted on or in front of any Unit unless performed within the owner's garage.

**Section 7.8. Commercial Activities Prohibited.** Units shall not be used for, or in connection with, the conduct of any trade, business, professional or commercial activity of any kind. However, this restriction shall not prohibit an Owner or resident from (a) maintaining his personal professional library therein; (b) keeping his personal business or professional records or accounts therein; or (c) handling his personal business or professional telephone calls or correspondence therefrom.

**Section 7.9. Damages.** Any damage inflicted upon existing improvements such as curbs, gutters, streets, sidewalks and such, by the purchaser or Owner of any Unit and/or their agents or builders, must be repaired as soon as possible after such damage is discovered, and the expense of such repair shall be borne by the Unit purchaser or Owner.

**Section 7.10. Use of Common Area** Owners are hereby prohibited and restricted from using any of Common Area, other than as permitted in this declaration of covenants, as depicted on the plat, or as may be allowed by the Directors. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Owners of Units in the Properties and is necessary for the protection of the interests of all said Owners in and to the Common Area. As part of the overall program of development of the Properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area and facilities thereon without charge during the sales and construction period to aid in its marketing activities.

#### **ARTICLE 9 - GENERAL PROVISIONS**

**Section 9.1. Enforcement.** The Association, the Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any Owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner a reasonable attorney's fee. The Directors may levy a fine or penalty against any Owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice.

**Section 9.2. Declarant Immunity.** By purchasing property within The Cove on 40th , the Unit purchaser or Owner:

- A. Is relying upon its own investigations and inspections of the Unit and Property in deciding to purchase the Property;
- B. Specifically purchases the Property **"AS IS" AND WITHOUT WARRANTY WHATSOEVER, INCLUDING ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE;**
- C. Agrees that it is the purchaser's or Owner's sole responsibility to obtain and comply with recommendations from competent geotechnical and engineering professionals with regard to the inspection of the Property prior to purchase and construction on the Unit;
- D. Acknowledges and agrees that the Declarant makes no warranties whatsoever with regard to the Unit or Property;
- E. Represents that the purchaser or Owner has inspected the Units and Property as deemed advisable by the purchaser or Owner and accepts the Units and Property in its current condition, and assumes any and all risk of damage and personal injury and, for themselves and their heirs, representatives, successors and assigns, waive any and all known or unknown claims of whatever nature against the Declarant and its agents, employees, officers, representatives, successors and assigns. Such waiver specifically includes, but is not limited to, any claims or damages caused by or related to any unforeseen surface or subsurface soil condition, soil compaction or lack thereof, rock falls, rock, block or other walls installed by or for the Declarant, the slope, elevation, or drainage of the Units and Property and/or any adjoining properties, or any other condition that may be associated with, or directly or indirectly related to, defects in design, construction, installation or management of improvements within, related to, or servicing the Units or Property. All of the foregoing also applies, without limitation, to claims with regard to the Common Area or conditions or improvements thereon.

A waiver and release agreement in the form set forth on Exhibit D and incorporated herein by reference shall be executed by all purchasers at the time any Unit is first sold to any purchaser and shall be recorded as part of the closing of such sale. However, the assumption of liability and waiver and release set forth in this paragraph shall be effective against any and all purchasers or Unit Owners of any Unit within Forth Street Townhomes Condominium whether or not the waiver and release shown on Exhibit D is signed and recorded.

**Section 9.3. Severability.** All of the conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and Owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

**Section 9.4. Duration.** The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a

term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

**Section 9.5. Amendment.** After the occurrence of one of the events set forth in Section 6.1 which terminates the Declarant's right to appoint and remove members of the Committee, this Declaration may be amended by a written document signed by the Owners of two-thirds (2/3) of the Units in The Highlands at Green Valley Subdivision. Until such time as one of the events set forth in Section 6.1 occurs which terminates the Declarant's right to appoint and remove members of the Committee, the Declarant is vested with the right to unilaterally amend this Declaration as may be reasonably necessary or desirable in the sole discretion of the Declarant.

**Section 9.6. Declarant Exemption.** The Declarant and all activities carried on by the Declarant in connection with the subdivision, development, sale, or related activity, with regard to the Property or any Unit, is exempt and free from all restrictions and constraints in this Declaration.

**Section 9.7. Violation as Nuisance.** Every act or omission whereby any restriction, covenant or condition in this Declaration is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Declarant or any Owner or Owners from time to time of any Unit or portion of the Property. Remedies under this Declaration shall be deemed cumulative and not exclusive.

**Section 9.8. Enforcement.** Each and all of the restrictions, covenants and conditions contained in this Declaration are for the benefit of the Declarant and the Owner or Owners from time to time of any Unit or portion of the Property. Each restriction, covenant and condition shall inure to the benefit of and pass with each and every Unit or portion of the Property and shall apply to and be binding upon each and every successor in interest thereto. The restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, or non-compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Declarant or the Owner or Owners from time to time of any Unit or portion of the Property; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent Owner of such Unit or portion of the Property shall be bound and obligated by this Declaration, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise. Failure by the Declarant or any Owner or Owners of any Unit or portion of the Property, or their respective legal representatives, heirs, successors, or assigns, to enforce any of the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**Section 9.9. Attorney Fees and Costs.** In the event enforcement hereof is required against any person or entity, the prevailing party to such action shall be entitled to recover all costs and attorney fees so incurred, whether or not suit is filed, and at trial or on appeal.

**Section 9.10. Notices.** Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it. Such notices shall be deemed received upon actual receipt or five (5) days after mailing, whichever is sooner.

**Section 9.11. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural when applicable, and (the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

and restrictions contained in this Declaration shall be construed together, but if it shall at anytime be held that any one of said conditions, covenants or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant or reservation, or any part thereof, shall be thereby affected or impaired and the Declarant, grantor and grantee, their heirs, successors and assigns, shall be bound by each Article, Section, subsection, paragraph, sentence, clause and phrase of this Declaration irrespective of the fact that any Article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

Section 7. No waiver. The failure of the Board or it agents to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Board or its agent of the payment of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and duly signed by or on behalf of the Board.

**ARTICLE 10 - ASSIGNMENT OF POWERS**

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned in the Declarant's sole discretion.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 23 day of July, 2009

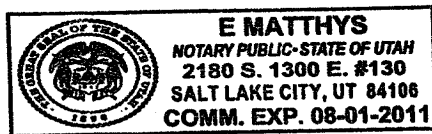
Declarant

  
Ryan Snow

STATE OF UTAH,

COUNTY OF SALT LAKE

On this 23 day of July, 2009, before me personally appeared Ryan Snow whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed).



  
Notary Public



**EXHIBIT A**

**PROPERTY DESCRIPTION**

Beginning at a point on the south line of 40<sup>th</sup> Street being East 874.18 feet and South 33.00 feet from the Northwest Corner of Section 9, Township 5 North Range 1 West, Salt Lake Base and Meridian and also being North 00 58'00" East 930.75 feet along the centerline of Jefferson Avenue to the extension of the South line of 40<sup>th</sup> street and South 89 34'00" East 148.39 feet to and along the south line of 40<sup>th</sup> street from the monument located in the intersection of Jefferson Avenue and 41 street (found monument) and running.

thence South 89 34'00" East 145.01 feet along the south line of 40<sup>th</sup> street  
thence South 00 58'00" West 300.01 feet;  
thence North 89 34'00" West 145.01 feet;  
thence North 00 58'00" East 300.01 feet to the point of beginning.

Contains 43,502 square feet, 0.999 acre

06-315-0001-0011 ✓ ✓