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ERNEST D ROWLEY, WEBER COUNTY RECORDER  
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REC FOR: CELTIC BANK

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
EDGEWATER BEACH RESORT CONDOMINIUMS PHASE ONE  
(Non-Convertible/Non-Withdrawable)**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
is made this 17<sup>th</sup> day of May, 2010, by Celtic Bank Corporation, a Utah corporation (the  
"Declarant"). LR  
20-134-0001 TO 0005

Declarant is the owner of the real property described in Exhibit "A" (the "Properties"), which is attached and incorporated by reference. By this Declaration, Declarant imposes upon the Properties (as more specifically defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each of the Properties, and establishes a flexible and reasonable procedure for the overall use, administration, maintenance and preservation of the Properties. In furtherance of such plan, Declarant has not caused, but anticipates that the owners of the Properties will, establish a homeowners' association to be formed to own, operate and maintain Common Areas, as defined below, and to administer and enforce the provisions of this Declaration and any By-Laws, Design Guidelines, and Use Restrictions and Rules which may be promulgated pursuant to this Declaration or by such homeowners association.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties. It is intended that the provisions of the Declaration be consistent with law. Should any provision in this Declaration be less restrictive than any ordinance or other applicable legal standard, then the more restrictive legal standard (or such portion thereof as so conflicts with the Declaration's provision) shall supersede and control.

This document does and is intended to create a condominium within the meaning of the Utah Condominium Ownership Act, Utah Code Section 57-8-1 *et seq* (the "Act").

Article I  
DEFINITIONS

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth in the Act and, if not inconsistent therewith, as set forth below.

1.1. "Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.2. "Association": Any incorporated or unincorporated entity or association formed by the Declarant or the Owners hereafter in accordance with the Act.

1.3. "Assessment": As defined in the Act.

1.4. "Board of Directors" or "Board": The body, if any, responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Utah corporate law.

1.5. "Builder": Any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person's business.

1.6. "Business day": Any week-day during the calendar year which is not an official federal or state holiday in the state of Utah.

1.7. "By-Laws": The By-Laws of any Association.

1.8. "Building": As defined in the Act. The Building shall be that wood-framed two story building, with crawl space basement and mechanical room, containing four (4) Units and Limited Common Areas shown on the condominium plat for Edgewater Beach Resort Phase 1 as filed in the records of the Weber County, Utah Recorder. In addition, the portions of the Properties not included in the Units or Limited Common Areas are Common Areas. The Common Areas are subject to utility easements serving the Properties as well as other properties in the Master Plan. The roadways on the Properties are private roads. Parking for the Building is undedicated within designated parking areas in the Common Areas. Further descriptions of the Units, Building, Common Areas, Limited Common Areas and easements are shown on the Condominium Plat.

1.9. "Common Area": Those real property and other rights and privileges as defined in the Act as common areas and facilities. Common Areas shall also include those portions of the Properties identified on the recorded condominium plat as "Limited Common Areas" which

are areas reserved to the use of those Units to which they are adjacent or from which they are accessed. Owners of other Units shall have no individual right to use such Limited Common Areas except to the extent necessary to access a Unit owned by that Owner.

1.10. **"Common Expenses"**: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to its authorities under this Declaration, the By-Laws, and any organic documents for the Association. Common Expenses shall not include any expenses incurred for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members of the Association.

1.11. **"Community-Wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Association.

1.12. **"Declarant"**: Celtic Bank Corporation; a Utah corporation, 340 East 400 South, Salt Lake City, Utah 84111; or any successor-in-title, or assign who takes title to the majority of the four Units on the Properties for the purpose of development and/or sale shall be the Declarant; provided there shall be only one Declarant of the Properties at any time. The Declarant shall be that person designated to receive service of process on behalf of the project. The bulk transfer of the Units by a Declarant shall automatically pass to the transferee the designation of that person for service of process, who by accepting such transfer shall accept also such designation. The transferring Declarant may record a notice of such transfer in the Public Records. Upon organization of the Association by Owners, the Secretary of the Association shall be deemed the person designated to receive service of process.

1.13. **"Declaration"**: This Declaration of Covenants, Conditions and Restrictions.

1.14. **"General Assessment"**: Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.3.

1.15. **"Master Plan"**: The land use plan for the development of Edgewater Beach Resort, as it may be amended from time to time, which plan includes the property described on Exhibit "B". Exhibit "A" sets forth the property which is initially subject to the Declaration. Exhibit "B" identifies properties which may in the future be made subject to a separate declaration consistent with the Master Plan. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this or any Declaration.

1.16. **"Member"**: A Person subject to membership in the Association pursuant to Section 3.2.

1.17. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.18. "Mortgagee": A beneficiary or holder of a Mortgage.

1.19. "Mortgagor": Any Person who gives a Mortgage.

1.20. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.21. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.22. "Properties": The real property described on Exhibit "A", together with such additional property as is subjected to this Declaration in accordance with Article VII.

1.23. "Public Records": The Weber County, Utah public records.

1.24. "Special Assessment": Assessments levied in accordance with Section 8.5.

1.25. "Specific Assessment": Assessments levied in accordance with Section 8.6.

1.26. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.27. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered portion of the Building on the Properties shown on a condominium plat filed in the Public Records with respect to any portion of the Properties, together with the structures, if any, constructed thereon, and that Unit's fractional interest in the include Common areas, but not any property dedicated to the public. A Unit shall also be defined as provided in the Act, and shall generally include any areas intended for independent use such as assigned storage closets and balconies or patios accessed only through the Unit. A Unit shall not include any physical improvements beyond the drywall or other interior surface of a Unit, which shall be considered an Area of Common Responsibility, including water, sewer and electrical pipes and conduits. The Units are denominated as Units 101, 102, 103 and 104, all as shown and described on the condominium plat for Edgewater Beach Resort Phase 1 as filed in the records of the Weber County, Utah Recorder. Each Unit contains 1700 square feet. All Units are equal size.

Accordingly, the percentage or fraction of undivided interests in the Common Areas and facilities appurtenant to each Unit and its Owner for all purposes, including voting, shall be twenty-five percent (25%). Units 101 and 102 are ground floor Units and Units 201 and 202 are second floor units. The second floor Units and the basement crawl space/mechanical room are accessed by a Limited Common Area stairwell.

Article II  
PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of reasonable use, access, and enjoyment in and to the Common Area, subject to:

(a) This Declaration, the Condominium Plat for Edgewater Beach Resort Phase 1, and any other applicable covenants, easements and restrictions;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board and the membership to adopt rules pursuant to Article X regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) The right of the Board to suspend the right of an Owner to use any recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing or additional violation, of the Declaration, and applicable Supplemental Declaration, the By-Laws, or rules of the Association after notice and a hearing pursuant to the By-Laws;

(e) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and

disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration. 2.3. Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice prior to disbursement of any award or proceeds. The award made for such taking or proceeds of such conveyance shall be payable to the Association to be disbursed as follows:

2.3.1. If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Members representing at least 75% of the total vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

2.3.2. If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

Article III  
MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board or the membership administering and enforcing the architectural standards and controls set forth in this Declaration and in any design guidelines adopted by the Declarant. The Association shall perform its functions in accordance with this Declaration, the organic documents of the Association, and the laws of the State of Utah.

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership as one Member applicable to that Unit subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws; and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by

any officer, director, partner or trustee, or other individuals designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A": Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.10.

In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one of the co-Owners seeks to exercise the vote.

(b) Class "B": The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration and the By-Laws. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period which shall run from the date of first conveyance of a Unit to a non-Declarant and expire upon conveyance of a majority of the Units to a non-Declarant. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

The Class "B" membership shall terminate two years after expiration of the Class "B" Control Period pursuant to the By-Laws unless the Declarant voluntarily terminates such membership earlier by filing a written notice of termination in the Public Records. Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which the Declarant owns.

Article IV  
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, private streets, landscaping, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall make reasonable efforts to keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration and the By-Laws, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of this Declaration, its Articles, By-Laws, and applicable law. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibits "A" or "B", personal property and leasehold and other property interest. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. The Declarant shall convey the initial Common Area to the Association prior to the conveyance of a Unit to any Person other than a Builder.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the By-Laws, or Association rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines, imposition of liens and suspension of the right to vote. In addition, in accordance with the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative with and in addition to any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the prevailing party shall be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs incurred in such action.

4.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Association organic documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.



4.5. Indemnification. To the fullest extent permitted by law, the Association shall indemnify every officer, director, and committee member, including members of the committees established under Article IX, and manager, against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been a officer, director, manager, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Utah Law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association and have personal liability in that capacity.) The Association shall indemnify and forever hold each officer, director, manager and committee member harmless from any and all liability to others on account of any authorized contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, manager or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.6. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to Weber County, Utah or to any other local, state or federal governmental or quasi-governmental entity, subject to such approval as may be required by Section 2.4.

4.7. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any surveillance camera security system, alarm system or other security system or measures, for limiting access to the Properties, is one which cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each person using the properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

Article V  
MAINTENANCE

5.1. Association's Responsibility.

(a) The Association shall endeavor to maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all landscaping and other flora, domestic water system, a dry grassland management program for the purpose of controlling vegetation in those areas that cannot be irrigated by the domestic water system or water rights, signage, lighting, irrigation systems and equipment, fences, walls, and other structures and improvements, including any roads, a fire protection system which is always readily available for use by the fire district, parking areas, sidewalks, paths and trails, situated upon the Common Area;

(ii) parking, sidewalks, landscaping and signage within public rights-of-way or designated easements within the Properties, except to the extent that such responsibility is assigned to Owners under Section 5.2.;

(iii) any ponds, streams and/or lands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls or bulkheads retaining water therein;

(iv) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

(v) the exterior, foundation, roof and utility service to and within the Building in which the Units are located;

(vi) all portions of the private, non-dedicated streets, roadways and parking areas serving the Project from the point of connection with public streets, and all curb, gutter, storm drains, parking strips and other improvements form a part of such private streets; and

(vii) the Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and improvements within the Area of Common

Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 75% of the votes in the Association agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, insurance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owners(s) thereof.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it had or should have had prior actual notice of the problem or deficient condition and in respect to that problem or that condition and/or others like it has been negligent in the performance of its maintenance responsibilities.

## Article VI INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available; or if not reasonably available, the most nearly equivalent coverages as are reasonably available;

(i) Blanket property insurance covering risks of direct physical loss on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, which may include, without limitation, flood insurance, and building ordinance coverage.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Weber County, Utah area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association at the request of such Member.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.6.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Utah which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants or their Mortgagees individually;

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insurers and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

- (iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (v) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (vi) a cross liability provision; and
- (vii) a provision vesting in the Board exclusive authority to adjust losses, provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay all costs which are not covered by insurance proceeds.

Article VII  
ANNEXATION OF PROPERTY

7.1. Annexation Without Approval of Membership. While a Class B Member, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B". The Declarant may transfer or assign this right to annex property, in whole or in part, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Alternatively, Declarant may record a separate declaration of covenants, conditions and restrictions against all or any portions of the real property described in Exhibit "B", at its discretion.

Annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such annexed property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of members holding 67% of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the

annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing, unless otherwise provided therein.

7.3. This Amendment of this Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B".

Article VIII  
ASSESSMENTS

8.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Units; (b) Special Assessments as described in Section 8.5; and (c) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments to the Association.

All assessments, together with interest (at a rate not to exceed 18% or the highest rate allowed by Utah law, if less than 18%) as computed from the date the delinquency first occurs, a late charge equal to the greater of \$10.00 or 5% of the principal amount past due, costs, and reasonable attorneys fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.7. Each such assessment, together with interest, late charges, costs, and reasonable attorneys fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association or its designee shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate. Assessments shall be paid in such manner and on such dates as the Board may establish, provided that General Assessments and Special Assessments shall be allocated on the basis of a Units percentage ownership in the Common Areas. If the Board so elects, assessments may be paid in two or more installments, and in such case, may include a time-price differential charge, in the Board's discretion. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year and shall be considered delinquent if not paid within the times specified by the Board. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding



assessments to be paid in full immediately. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The Board may further prescribe: (a) procedures for collecting General Assessments or installments thereof in advance from new Owners out of "closing transactions"; and (b) different procedures for collecting assessments from Owners who have had a history of being untimely in the payment of assessments.

No Owner may exempt himself from liability for assessments by non-use of the Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

8.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay General and Special Assessments on any of its unsold Units which are subject to assessment under Section 9.8 in the same manner as any other Owner, or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Such obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

8.3. Computation of General Assessment. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared pursuant to Section 8.4.

General Assessments shall be levied equally on all Units subject to assessment under Section 8.8, and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted expenses, including reserves.

In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board may take into account the number of Units subject to assessment under Section 8.8 on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant owns any property subject to this Declaration, the Declarant may, but shall not be obligated to reduce the General Assessment for any fiscal year by payment of a subsidy, which may be treated as either a contribution, an advance against future assessments due

from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by at least 75% of the total votes in the Association. There shall be no obligation to call a meeting to consider the budget unless the Members petition the Board as provided in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments. If the Board fails for any reason to determine the budget for any year, or the budget is disapproved, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

**8.4. Reserve Budget and Reserve Contribution:** The Board shall annually prepare a reserve budget which takes into account the number and nature of the Association's replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required reserve contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by General Assessments over the budget period.

**8.5. Special Assessments:** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any Special Assessment which would exceed \$300.00 in any one fiscal year shall require the affirmative vote or written consent of Class "A" Members representing at least 51% of the total Class "A" votes, and the written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and if so determined by the Board, may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**8.6. Specific Assessments:** The Board shall have the power to levy a Specific Assessment against any Unit or Units for monetary fines authorized by this Declaration or the By-Laws, and for expenses of the Association incurred in providing benefits, items, or services not provided to all Units within the Properties, whether such expenses are incurred (a) upon request of the Owner of a Unit for specific items or services relating to the Unit; or (b) as a consequence of the conduct of less than all Owners, their tenants, invitees, or guests. The Association may also levy a Specific Assessment against any Unit to reimburse the Association for costs incurred in bringing the Unit into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Association's organic documents, the By-Laws, and the Rules, provided the Board gives prior notice to the Unit Owner and an opportunity for a hearing in accordance with Section 3.24 of the By-Laws and the Act.

8.7. Lien for Assessments; Remedies for Nonpayment. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, the late charges, and costs of collection (including reasonable attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first residential Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure as provided by the Act.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; (c) each other Unit shall be charged, in addition to its usual assessment, its prorata share of the assessment that would have been charged against such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the first Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments on a foreclosed Unit shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment including such acquirer, its successors and assigns.

8.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the first month following the conveyance of the Unit by the Declarant. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time the obligation for assessments commences on the Unit.

8.9. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

8.10. Exempt Property. The following property shall be exempt from payment of assessments:

- (a) All Common Area of the Association; and
- (b) Any property dedicated to and accepted by a governmental authority or public utility (except that utility easements across Units shall not affect the Unit's liability for assessments).

Article IX  
ARCHITECTURAL STANDARDS

9.1. General. No improvement, alteration or modification shall be placed, erected, or installed in any Unit which affects its structure integrity, utility service or any other Unit, and no exterior improvements, alterations or modification (including clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials, painting, signage or lighting) shall take place except in compliance with this Article and Board approval.

Any Owner may remodel, paint or redecorate the interior of his Unit without approval. However, modifications to the interior of porches, patios, and similar portions of a Unit visible from outside the Unit shall be subject to approval by the Board.

All improvements, modifications or additions within a Unit of a structural nature or affecting utility service to the Unit or any other Unit or change the size of the Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by the Board.

This Article shall not apply to the activities of the Declarant or the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

9.2. Architectural Review. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the Board in having any application reviewed by architects, engineers or other professionals.

9.3. Guidelines and Procedures. Design Guidelines. The Declarant has the discretion to prepare and impose Design Guidelines and a Site Plan for the Properties. The Design Guidelines contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Design Guidelines are

intended to provide guidance to Owners and Builders regarding matters of particular concern to the committees in considering applications hereunder. The Design Guidelines are not the exclusive basis for decision of the Board or any Declarant on the Properties, and compliance with the Design Guidelines does not guarantee approval of any application. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines.

9.4. No Waiver of Future Approvals. Approval of proposals, plans and specification, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.6. Limitation of Liability. The standards and procedures established by this Article are intended to enhance the overall aesthetics of the Units and the Common Areas and shall not create any duty to any Person. The Board and Association shall bear no responsibility for ensuring the structural integrity or soundness of approved construction or modifications nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the Board, Association and their members shall be indemnified by the Association as provided in Section 4.6.

9.7. Enforcement. Any structure or improvement placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by the Board, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Board.

#### Article X USE RESTRICTIONS AND RULES

10.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Properties in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the community and to regulate and control the Area of Common Responsibility. The Properties are subject to the land development, architectural, and design provisions set forth in Article IX, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

10.2. Authority to Promulgate Use Restrictions and Rules. Subject to the terms of this Article, the Declarant may impose initial use restrictions applicable to the Units which may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial use restrictions. The Board shall send notice by mail to all Owners concerning any such proposed action at least ten (10) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by the Members representing at least 51% of the total Class "A" votes and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Members representing at least 51% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules") to any requesting Member or Mortgagee, together with a clear and precise copy of the change proposed or adopted and summary of its effect.

(d) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines. In the event of any inconsistency between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

**10.3 Owner's Acknowledgment:** All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into a recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Use Restrictions and Rules may change from time to time.

**10.4 Rights of Owners:** Except as may be specifically set forth in this Declaration (either initially or by amendment), neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) **Equal Treatment:** Similarly situated Owners and occupants shall be treated similarly.

(b) **Speech:** The rights of Owners and occupants to display political signs and symbols in or on their Units shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants of Units such as...

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(g) Alienation. No rule shall prohibit leasing, hypothecation or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit. The Units are zoned for nightly rental business and may be so used in compliance with such zoning requirements.

(h) Reasonable Rights to Use. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to use the Properties.

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply



no fee to any such Owners without their written consent, unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit, until such prior non-conforming use is abandoned.

The limitations in this Section 10.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 1.5.2.

**Article XI  
EASEMENTS**

**11.1. Easements of Encroachment:** There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

**11.2. Easements for Utilities, Etc.**

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual, non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; wetlands and drainage systems; street lights and signage; and all utilities, including, but not limited to water, sewers, telephone, gas, and electricity, and utility meters, and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plat of the Properties.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, and replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion

of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B".

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit; and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.3. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and/or in good faith to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board.

## Article XII MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties.

12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessment or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days; or

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

12.2. No Priority. No provision of the Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgage of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area. Further, the lien of the Association for Assessments shall be subordinate to the lien of any first Mortgage on a Unit.

12.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Article XIII  
DECLARANT'S RIGHTS  
Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design Guidelines made after termination of the Class "B" Control Period shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Properties primarily for development and sale.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 40 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article XIV  
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

14.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the

Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section 14.2, shall be resolved using the procedures set forth in Section 14.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

14.2 Exempt Claim. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 14.3:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX (Architectural Standards) and Article X (Use Restrictions and Rules);

(c) any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of Utah in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00;

(d) any suit arising out of any written contract between Owners, or between the Declarant and any Builder, which would constitute a cause of action under the laws of the State of Utah in the absence of the Declaration, By-Laws, and Articles of the Association; and

(e) any suit in which all parties are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 14.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 14.3 shall require the approval of the Association.

14.3. Mandatory Procedures for All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely, but in detail:

the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

2. on the basis of the Claim (i.e., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the Claim arises);

3. what Claimant wants Respondent to do or not do to resolve the Claim;

4. and that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet with the person and confer for the purpose of resolving the Claim by good faith negotiation.

2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the parties and to the welfare of the community.

(c) Mediation. If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency or certified mediator providing similar services in the State of Utah upon which the Parties may mutually agree.

2. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim, provided, nothing herein shall release or discharge Respondent from any liability to Persons, not a Party, to the foregoing proceedings.

3. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined of reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation

notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

4. Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of the American Arbitration Association applicable to non-commercial/non-employment disputes, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Utah. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Utah.

14.4. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 14.3(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 14.3(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 14.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 14.4(c).

(c) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or

not less favorable to Claimant than Respondent's Settlement Offer to the Claimant shall also be awarded to such Respondent its Post-Mediation Costs; such Costs to be borne by all such Claimants.

**14.5 Enforcement of Resolution:** After resolution of any Claim through negotiation, mediation, or arbitration in accordance with Section 14.3, if any Party fails to abide by the terms of the agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 14.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

**Article XV**  
**GENERAL PROVISIONS**  
**15.1 Duration.**

(a) Unless terminated as provided in Section 15.1(b), this Declaration shall have perpetual duration. If Utah law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein.

(b) Unless otherwise provided by Utah law, in which case such law shall be in control, this Declaration may not be terminated within the first 40 years after the date of recording without the consent of all Unit Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least 75% of the total Units within the Properties and signed by the Declarant, if the Declarant owns any portion of the Properties, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

**15.2 Amendment.** The Declarant may amend this Declaration if such amendment is specifically required to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Units. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of not less than 75% of the total number of Units within the Properties and the consent of the Declarant, so long as the Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, (respectively or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. A procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

15.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XIV, if applicable.

15.5. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

15.6. Use of the Words "Edgewater Beach Resort". No Person shall use the words "Edgewater Beach Resort" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Edgewater Beach Resort"



in printed or promotional matter where such terms are used solely to specify that particular property is located within the Properties and the Association shall be entitled to use the words "Edgewater Beach Resort" in its name.

15.7. **Compliance.** Every Owner and occupant of any Unit shall comply with this Declaration, any applicable Supplemental Declaration, the By-Laws, and the Use Restrictions and Rules promulgated pursuant to Article X. Subject to the terms of Article XIV, failure to comply shall be grounds for an action by the Association or, in a proper case, by an aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

15.8. **Notice of Sale or Transfer of Title.** Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

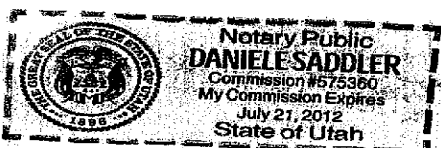
IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 16<sup>th</sup> day of May, 2011.

CELTIC BANK CORPORATION

By: *Reese Howell*  
Its: CEO

STATE OF UTAH )  
 )ss.  
County of Salt Lake )

The foregoing instrument was acknowledged on this 16<sup>th</sup> day of May, 2011, by Reese Howell, Jr. the CEO of Celtic Bank Corporation.



*Daniele Saddler*  
Notary Public

EXHIBIT A

20-134-0001 T6

0005

THE LEGAL DESCRIPTION FOR THE PARCEL TO BE KNOWN AS EDGEWATER BEACH RESORT PHASE 1 IS AS FOLLOWS:

A PART OF THE SOUTH WEST QUARTER OF SECTION 13, TOWNSHIP 6 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF STATE HIGHWAY U-39(40.00 FEET PERPENDICULARLY DISTANT NORTHERLY FROM THE CENTERLINE OF SAID HIGHWAY), WHICH IS 243.89 FEET NORTH 0°25'49" EAST ALONG THE SECTION LINE FROM THE SOUTHWEST CORNER OF SAID SECTION 13; AND RUNNING THENCE NORTH 0°25'49" EAST 230.61 FEET, THENCE SOUTH 89°34'29" EAST 130.80 FEET, THENCE NORTH 6°42'54" EAST 37.53 FEET, THENCE SOUTH 85°09'54" EAST 59.89 FEET, THENCE SOUTHERLY ALONG THE ARC OF A 376.35 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 26.90 FEET (CENTRAL ANGLE EQUALS 4°05'48" AND LONG CHORD BEARS SOUTH 6°52'59" WEST 26.90 FEET), THENCE SOUTH 8°55'52" WEST 73.42 FEET, THENCE SOUTH WESTERLY ALONG THE ARC OF A 111.00 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 14.27 FEET (CENTRAL ANGLE EQUALS 7°22'02" AND LONG CHORD BEARS SOUTH 5°14'51" WEST 14.26 FEET), THENCE SOUTH 1°33'50" WEST 23.97 FEET, THENCE SOUTHEASTERLY ALONG THE ARC OF A 61.49 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 27.74 FEET (CENTRAL ANGLE EQUALS 25°50'41" AND LONG CHORD BEARS SOUTH 11°21'25" EAST 27.50 FEET), THENCE SOUTHEASTERLY ALONG THE ARC OF A 116.50 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 88.90 FEET (CENTRAL ANGLE EQUALS 43°43'22" AND LONG CHORD BEARS SOUTH 46°08'21" EAST 86.76 FEET), THENCE SOUTHEASTERLY ALONG THE ARC OF A 1001.50 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 80.00 FEET (CENTRAL ANGLE EQUALS 4°34'36" AND LONG CHORD BEARS SOUTH 70°17'20" EAST 79.98 FEET), THENCE SOUTH 19°36'10" WEST 61.95 FEET, THENCE SOUTH 70°43'57" EAST 32.24 FEET, THENCE SOUTH 26°26'49" EAST 76.32 FEET TO THE RIGHT OF WAY LINE OF STATE U-39 (40.00 FEET PERPENDICULARLY DISTANT NORTHERLY FROM THE CENTERLINE OF SAID HIGHWAY), THENCE TWO (2) COURSES ALONG SAID NORTHERLY RIGHT OF WAY LINE AS FOLLOWS: NORTHWESTERLY ALONG THE ARC OF A 1869.86 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 69.62 FEET (CENTRAL ANGLE EQUALS 2°08'00" AND LONG CHORD BEARS NORTH 71°47'36" WEST 69.61 FEET) AND THENCE NORTH 60°43'36" WEST 318.64 FEET TO THE POINT OF BEGINNING.  
CONTAINS 68,986.9 SQ FT OR 1.584 ACRES.

LF

EXHIBIT B

20-013-0020

A part of the Southwest quarter of Section 13, Township 6 North, Range 1 East, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the Northerly right of way line of State Highway U-39 (40.00 feet perpendicularly distant Northerly from the centerline of said Highway), which is 243.89 feet North 0°25'49" East along the section line from the Southwest corner of said Section; thence North 0°25'49" East 657.72 feet along said section line to the Southerly line of Pineview Reservoir right of way; thence four (4) courses along said Southerly line as follows: North 63°12'30" East 325.76 feet; South 79°03'30" East 319.70 feet; South 35°45'20" East 101.60 feet to the 1/64th section line and an existing fence line and South 0°20'30" West 854.05 feet along said 1/64th section line and existing fence line to said Northerly right of way line of State Highway U-39 (40.00 feet perpendicularly distant Northerly from the centerline of said highway); thence two (2) courses along said Northerly right of way line as follows: Northwesterly along the arc of a 1869.86 foot radius curve to the right a distance of 374.12 feet (central angle equals 11°27'49" and long chord bears North 76°27'31" West 373.49 feet) and North 70°43'36" West 318.64 feet to the point of beginning, LESS AND EXCEPTING THE LAND DESCRIBED IN EXHIBIT A ABOVE.

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