

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TUSCAN HILLS
A TOWNHOUSE AND SINGLE FAMILY HOME PROJECT**

This Declaration of Covenants, Conditions, and Restrictions of Tuscan Hills, a Townhouse and Single Family Home Project, hereinafter referred to as the "Declaration", is made and executed this 14 day of December, 2005, by Haskell Homes, Inc., a Utah Corporation, hereinafter referred to as the "Declarant".

RECITALS

A. Declarant is the owner of, or has future rights to acquire certain real property (the "Property") located in Washington County, Utah which is more particularly described in the attached Exhibit "A".

B. Declarant is developing a subdivision known as TUSCAN HILLS on the Property referenced herein. Tuscan Hills will be a multiple phase development which will include a mixture of single-family lots (the "Single Family Lots"), and townhouse units (the "Townhouses" or "Units") in separate phases. The Townhouse owners will have rights to common areas designated on the Concept Map as Townhouse Common Areas, from which the Lot Owners will be excluded. All Townhouse and Lot owners in the Project will have the rights to use, as common areas, an entrance area, road landscaping and road islands, walking trails, and two recreation areas (collectively the "Community Common Areas"). The concept of Tuscan Hills is to have all of the townhouse unit owners in the project solely responsible for the maintenance and upkeep of the Townhouse Common Areas, and then, as a separate matter, to have all owners, Townhouse owners and Single Family Lot owners share and share alike, responsibility for the maintenance and upkeep of the Community Common Areas.

C. This Declaration will serve as the Covenants, Conditions and Restrictions of Tuscan Hills and will create an Owners Association (hereafter the "Owners Association" or "Association") to oversee the management of the Townhouses and Single Family Lots in Tuscan Hills, and which Association will maintain all of the Common Elements itemized herein.

D. Declarant hereby declares that all of the Townhouses shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the equitable servitudes itemized herein, all of which are created for the benefit of the Townhouse Owners. The covenants, conditions and restrictions contained in this Declaration are intended to, and shall in all cases run with the title of the Townhouses, and be binding upon the successors, assigns, heirs, lien holders, and any other person holding any interest in the Townhouses, and shall inure to the benefit of the entire Project.

E. Certain Buildings and other improvements have been or will be constructed, consistent with the terms of this Declaration, on the land as shown on the Concept Map referred to below.

F. The Declarant intends to execute, acknowledge and record in the office of the County Recorder of Washington County, State of Utah, a certain instrument pertaining to the Project and entitled "Record of Survey Map" (the "Concept Map"). The Concept Map will preliminarily designate the Townhouse Common Areas and the Community Common Areas.

G. The Declarant intends by recording this Declaration and the Concept Map, to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all Townhouses and Lots within said Project and the Owners thereof.

NOW THEREFORE, the Declarant does hereby make the following declaration:

ARTICLE 1

DEFINITIONS

1.01. Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article 1.

1.02. “Annual Assessment” shall mean the charge levied and assessed each year against each Townhouse Unit and the Owner thereof, and every Lot and the Owner thereof, pursuant to Section 9 hereof. It is contemplated that the Annual Assessments shall be different for the Townhouse Owners and the Single Family Lot owners, because the Townhouse Owners, in addition to having pro-rata responsibility for the Community Common Areas, also have responsibility for the Townhouse Common Areas. There will be two bodies of accounting, one set of accounting for the Townhouse obligations which herein specified are the responsibility only of the Townhouse owners, and one set of accounting for those matters which are the obligations of BOTH Townhouse and Lot owners.

1.025 “Architectural Control Committee or ACC” shall mean a body appointed by the appropriate authority of the Tuscan Hills Owners Association which shall have authority, when appointed, to regulate and approve all non declarant construction, maintenance, design, color, work timetables, etc., within the project. The ACC will have the authority to promulgate, from time to time, regulations including but not limited to construction rules, architectural design styles, approved material lists, approved color schemes, acceptable methods of vehicle, boat, or RV storage, placement of structures, etc. As phases of the Project come on line, ACC guidelines for each phase will be recorded; such recording will not limit the ACC from the foregoing regulation and rulemaking authority in addition to the recorded information.

1.03. “Articles of Incorporation” shall mean the Articles of Incorporation of Tuscan Hills Owners Association, a Utah Nonprofit Corporation.

1.04. “Assessment” shall mean an Annual Assessment, a Reserve Fund Assessment, a Special Assessment, a Reimbursement Assessment or any other Assessment permitted under this declaration. All Assessments shall activate at Closing of a Townhouse or a Lot.

1.05. “Board” shall mean the governing board or management committee of the Tuscan Hills Owners Association, appointed or elected in accordance with the Declaration and in accordance with the Articles of Incorporation and Bylaws of the Owners Association.

1.06. “Building” shall mean the building(s) containing the Townhouse Units that have been, or will be constructed on the Land; as such building(s) are shown on the Concept Map and/or Final Plat.

1.07. “Bylaws” shall mean the Bylaws of the Tuscan Hills Owners Association, a Utah Nonprofit Corporation.

1.08. “City” shall mean St. George City Municipal Corporation and its appropriate departments, officials, boards, commissions and council. Although the City may be conveyed title to some of the Property, particularly the roads therein, the City is not an Owner for purposes of this Declaration, and no voting rights in the Tuscan Hills Owners Association will be appurtenant to the City’s ownership of any area inside the Property.

1.09. “Townhouse Common Areas” shall mean all areas and facilities in the Project which are appurtenant to the Townhouse Units, excluding the Community Common Areas which are otherwise described herein, except the Units themselves; including without limitation the land within the phases of the Project designated for Townhouse units only, all Townhouse Common Areas and are described and designated as such on the Concept Map and/or Final Plat. The Townhouse Common Areas are indicated in the Concept Map and/or Final Plat.

1.10. “Townhouse Common Elements” shall mean all the real property, improvements, facilities and equipment owned and/or managed exclusively for the mutual benefit of the Townhouse Lot Owners, or owned by another person subject to a lease, license, easement or other arrangement which benefits the Townhouse Owners; this specifically excludes the Community Common Areas.

1.11. “Common Expense Fund” shall mean the fund created or to be created pursuant to the provisions of Article 9 of this Declaration and into which all monies of the Association shall be deposited. The Common Expense Fund

shall have two distinct accounts; the first for the maintenance of the Townhouse Common Areas, which shall be funded by the Townhouse Unit Owners only, and the Community Common Area maintenance fund, which shall be for the maintenance of all other common areas of the Project, and which shall be funded by all owners. Notwithstanding anything else herein, it is contemplated that the Declarant may or will be required to pay expenses to maintain the common areas throughout the project before sufficient reserves are built up in the Common Expense Fund or from assessments itemized in 1.04 above; at any time the Common Expense Fund or the assessments in 1.04 above have sufficient funds, the Declarant may take reimbursement for prior maintenance, upkeep, and repair of any of the common areas throughout the project.

1.12. "Townhouse" shall mean a Townhouse Unit and unless otherwise adjusted upon completion of the Project an equal undivided interest in the Townhouse Common Areas. And an equal interest in the Community Common Areas together with all lot and townhouse owners in the Project.

1.14. "Owners Association" shall mean the Tuscan Hills Owners Association, a Utah Nonprofit Corporation, whether incorporated or not, and as the context requires the officers and directors and Board of that Owners Association.

1.15. "Declarant" shall mean Haskell Homes, Inc., a Utah corporation and its successors and assigns.

1.16. "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions of Tuscan Hills, a Townhouse and Single Family Home Project, together with any subsequent amendments or additions. The Concept Map and/or Final Plats for Tuscan Hills easements and other matters shown on the Concept Map and/or Final Plats are also incorporated into this Declaration by reference.

1.17. "Development Agreement" shall mean that certain Development Agreement, dated May 6, 2005, entered into by and between Declarant and St. George City, as amended and supplemented from time to time.

1.17.2. Community Common Areas. Wherever in this Declaration there is a reference to the Community Common Areas, the reference refers collectively to the entrance, and roadway open space and roadway islands on public streets, walking trails, and two pool and/or recreation facilities which are indicated on the Concept Map; more generally the Community Common Areas also refers to any areas identified in the Concept Map and/or Final Plats as common areas, which are not the previously defined Townhouse Common Area, or Townhouse Limited Common Areas. The Community Common Areas are preliminary conceptions of recreational amenities which may become available in the Project; nothing herein requires the Declarant to construct the Community Common Areas as conceived in the Concept Map. All Units and Lots will have an undivided interest in the Community Common Areas when constructed. The Concept Map and/or Final Plats may also refer to the Community Common Areas as "All Common Areas".

1.17.3. Community Common Area Initial Assessment. To insure that the Community Common Areas get constructed, the Declarant shall deposit \$4,000 from the proceeds of each Townhouse Unit or Lot closing into a trust account with Southern Utah Title Company. Declarant's obligation is to build or set aside funds for the construction of all Community Common Areas up to a total of one million five hundred thousand dollars (\$1,500,000). The Declarant is not obligated to construct any of the Community Common Areas until the total of the Community Common Area Initial Assessments are sufficient to completely pay for the construction of that part of the Community Common Area being built, but if the Declarant decides to advance the construction of the Community Common Areas then Declarant shall be entitled to continue to collect and reimburse Declarant from such Community Common Area Initial Assessments until fully repaid. Notwithstanding anything else herein, the City may require the Declarant, or the Declarant may elect to complete or start construction on parts of the Community Common Areas before sufficient Initial Community Common Area Assessments are collected to pay for the construction of those parts of the Community Common Areas; if that is the case, the Declarant shall receive reimbursement from future Community Common Area Initial Assessments as the same are received from Unit or Lot sales. Conceptually, the Declarant is initially contributing land upon which the Community Common Areas will be constructed and anticipates that the amenities constructed thereon will cost \$1.5M; the Community Common Area Initial Assessment is designed to reimburse the Declarant for the cost of constructin.

1.18. "Institutional Holder" shall mean a mortgagee, which is a bank or other established mortgage lending company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency which has a first mortgage lien on any Unit in the Project.

1.19. "Land" shall mean the land upon which the Project is situated, as more particularly described on Exhibit "A" hereto. It is contemplated that additional contiguous property may be annexed into and controlled by this Declaration as it is acquired by the Declarant. This Declaration shall cover the first two phases of the project which the Declarant owns; but the Declarant may acquire future contiguous property which have a total description and master plan layout attached as Exhibit "C".

1.20. "Lease" shall mean any agreement for the leasing or rental of the property.

1.21. "Limited Common Areas" shall mean any Common Areas designated as reserved for use of a certain Townhouse Unit or Townhouse Units to the exclusion of the other Townhouse Units in the Project. Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Areas for the exclusive use of the Owner or Owners of the Townhouse Units on either side thereof as provided for herein. Any balconies, patios, porches, or storage facilities that are attached to the Units or are otherwise identified on the Concept Map with the same number or by other designation by which a Unit and/or Limited Common Areas is identified or is (in the case of balconies) adjacent to the Unit, shall be Limited Common Areas for the exclusive use of the Owner of the Unit bearing the same number or designation. The Declarant reserves the power to and the right in its sole discretion to assign or designate storage spaces or areas for use by individual Units if applicable.

1.22. "Lot" shall mean a single family residential building Lot shown on an official Plat of the Tuscan Hills Subdivision.

1.24. "Lot Owner" shall mean the person or persons holding fee simple title to a Single Family residential building Lot in the Tuscan Hills subdivision.

1.25. "Owners Association" shall mean the Tuscan Hills Owners Association, Inc., comprised of the owners of each Unit and Single Family Lot in the project, whether incorporated or not, and as the context requires, the officers and directors, or Board of the Owners Association.

1.26. "Manager" shall mean the person, firm, or company, if any, designated from time to time by the Owners Association to manage, in whole or in part, the affairs of the Owners Association and the Project.

1.27. "Concept Map" shall mean the Record of Survey Concept Map or where applicable any Plat or Concept Map referencing the Tuscan Hills project recorded or to be recorded in the office of the County Recorder of Washington County, State of Utah. The Concept Map is attached as Exhibit "A". The Concept Map is a concept of the overall development of the Project, which will be ultimately modified by municipal approval of the plats of the phases as they are approved. The Concept Map may change as final phase plats are approved.

1.28. "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Townhouse or any part thereof is encumbered.

1.29. "Mortgagee" shall mean (i) any persons named as the mortgagee or beneficiary under any Mortgage or Deed of Trust by which the interest of any Owner is encumbered, or (ii) any successor to the interest of such person under such Mortgage or Deed of Trust.

1.30. "Mortgage Servicer" shall mean a Mortgagee who services any Mortgage or Deed of Trust on any individual Townhouse Unit in the Project.

1.33. "Owner" shall mean the person or persons having title to any Single Family Lot or Townhouse Unit. Owner shall mean the person holding fee simple title, including the Declarant, and buyers under any contract for deed, but shall exclude any person or entity holding title only for purposes of securing performance of an obligation, unless that entity has taken possession. For voting purposes there is only one owner of a Single Family Lot or Townhouse Unit

1.34. "Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

1.35. "Plat" shall mean the official subdivision Plat or record of survey Concept Map affecting the Tuscan Hills Subdivision as approved by the City and recorded in the office of the Washington County Recorder, as such may be amended from time to time.

1.36. "Project" shall mean the land, the Buildings, and all improvements and Land covered by this Declaration and the Concept Map.

1.37. "Public Rights" shall mean the rights of the public to use any portion of the Property as specified in the Municipal Code of the City.

1.39. "Reimbursement Assessment" shall mean a charge against a particular Owner and his Unit or Lot for the purpose of reimbursing the Owners Association for expenditures and other costs of the Owners Association, directly attributable to the Owner, by this Declaration or the Rules and Regulations

1.40. "Start Up Assessments" shall mean a 3 month advance assessment of annual assessments paid at each closing of a Lot or Unit. The Start Up Assessments shall be used for landscape maintenance only of the Townhouse Common Areas (which assessments shall only be paid by Townhouse Owners), and Community Common Area landscape maintenance (which shall be paid by both Townhouse Owners and Lot Owners). The purpose of the Start Up Assessment is to reimburse Declarant, for the maintenance and/or unexpected repair of the Townhouse Common Areas and Community Common Areas until enough units or lots have sold for the project to carry itself.

1.42. "Subdivision" shall mean the Tuscan Hills Subdivision as shown on the Plat.

1.43. "Tuscan Hills" shall mean the Townhouse Units and Single Family Homes project as more particularly described on the recorded Concept Map or Concept Maps of Tuscan Hills.

1.44. "Special Assessment" shall mean a charge against each Owner and his Unit representing a portion of the costs to the Association for the purpose of funding major capital purchases, repairs, maintenance, replacements and Improvements, pursuant to Article 9 hereof, or for any other purpose designated herein.

1.45. "Total Votes of the Owners Association" shall mean the total number of votes appertaining to all Townhouse and Single Family Lots in the Project.

1.46. "Trail" shall mean a Trail or the system of Trails for Tuscan Hills which is established from time to time by the Declarant and/or the Lot Owners Association and which may be identified in the Development Agreement or on any Plat for Tuscan Hills. The Trail may be owned by the Owners Association and/or conveyed, assigned or transferred by Deed or other written instrument to the appropriate Municipal or other entity or Authority.

1.47. "Unit" shall mean one of the individual Townhouse units, including the garage to such Unit, if any, consisting of all of the exterior surfaces inward.

1.48. "Unit Owner" shall mean the person or persons, owning in fee simple a Townhouse in the Project, as such ownership is shown by the records of the County Recorder of Washington County, State of Utah. The term "Unit Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or persons purchasing a Townhouse under contract (until such contract is fully performed and legal title conveyed of record).

ARTICLE 2

SUBMISSION AND DIVISION OF PROJECT

2.01. Submission to Declaration. The Declarant hereby submits the Land designated on the Concept Map as a fee simple Planned Unit Development to be known as Tuscan Hills, a Utah Townhouse and Single Family Home Project.

All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said Property and division thereof into areas containing only Townhouses or Single Family Homes as indicated on the Concept Map; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit on the land and shall be binding upon the Declarant, its successors and assigns, and to any persons acquiring, leasing, or owning an interest in the real property and improvements comprising the Project, and to their respective personal representatives, heirs, successors, and assigns.

2.02. Separate Phases. The Project will be developed in separate phases, with each phase containing only single family homes, or only townhouses.

2.03. Division into Townhouses. Those areas of the Project designated for townhouse development only, are hereby divided into townhouses, each such townhouse consisting of a Unit and an appurtenant equal undivided interest in the Townhouse Common Areas and together with the Lot Owners an undivided share of the Community Common Areas.

ARTICLE 3

BUILDINGS AND IMPROVEMENTS

3.01. Buildings and Improvements. The Lot boundaries, house pad sites, and Townhouse pad sites and other improvements which have or will be constructed on the land are generally described on the Concept Map. The Concept Map will also indicate Townhouse only areas, and areas within the project containing only Single Family Lots. Specific details of each phase will be more particularly indicated on the recorded plats for each phase of development.

3.02. Description of Units. The Concept Map contains the initial Unit numbers, initial projected locations, approximate dimensions of the footprint of each Unit, and approximate dimensions of all Lots in the Project and all other information necessary to identify each such Unit or Lot; all of which foregoing information is subject to change as the relevant plats are approved and recorded on each phase of development. Said dimensions are approximate as to size and floor space, and said dimensions are shown for the purposes of identification only. Purchaser assumes sole responsibility to confirm locations, sizes and conditions of the Unit or Lot on the final recorded plat. During development of the project, the Declarant may make adjustments in the sizes of the Townhouse footprints to provide for limited common area porches, patios, or balconies which are not indicated on the Concept Map.

3.03. Description of Townhouse Common Areas and Community Common Areas. The Concept Map and/or Final Plats contains a description of the Townhouse Common Areas of the Project, and the Townhouse Limited Common Areas, which are appurtenant only to the Townhouses, and the Community Common Areas which are common areas to all Units and Lots in the Project

3.04. Description of Limited Common Areas. The Concept Map and/or Final Plats contain a description of the Limited Common Areas of the Project. The Concept Map and/or Final Plats also designate the Unit or Units to which each of the Limited Common Areas are reserved.

ARTICLE 4

NATURE OF THE INCIDENTS OF TOWNHOUSE OWNERSHIP

4.01. Interior of Units. Each Unit Owner shall have the exclusive right to paint, repaint, tile, wallpaper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of his or her Unit and the surfaces of all walls, ceilings, floors, and doors within such boundaries. Each Unit Owner, consistent with ACC approval, rules, and regulations, shall also have the right and obligation to maintain the roofs and exterior walls including paint, stucco, windows, etc., of their Unit in the original material, color and quality. Any deviation from this must prior to repair or maintenance, (i) receive the prior written consent of the Board and/or ACC as appropriate, (ii) shall comply with all applicable laws, ordinances, and building codes, (iii) shall not interfere with facilities necessary for the support, use, or enjoyment of any other part of the Project, (iv) shall not impair the structural soundness or integrity of the Building in

which it is located, and (v) shall not encroach upon the Common Areas or any part thereof, unless the Board of Trustees shall consent in writing to such encroachment.

4.02. Maintenance of Units. Each Unit Owner shall keep the interior and exterior of his or her Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any such Unit, Lot or house upon a Lot shall develop an unsanitary, unmaintained, or unclean condition or fall into a state of disrepair, and in the event that the Unit Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Board, the Board on behalf of the Owners Association shall have the right, at the expense of the Unit Owner and without liability for trespass or otherwise, to enter said Unit or Lot and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Owners Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair.

4.03. Title. Title to a Unit or Lot within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation joint tenancy or tenancy in common, but no Unit shall be owned legally or beneficially by more than eight owners.

4.04. Ownership of Townhouse Common Areas. Each Unit in the Project is hereby allocated an equal undivided interest in the Townhouse Common Areas in the Project. Except as otherwise provided in this Declaration, any Unit Owner shall be entitled to nonexclusive use of the Townhouse Common Areas (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of other Unit Owners and is not contrary to any rules and regulations promulgated by the Owners Association. Except as otherwise provided in this Declaration, any Unit Owner shall have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Unit Owner. Each Unit and Lot is hereby allocated an equal undivided interest in the Community Common Areas.

4.05. Inseparability. Title to no part of a Unit within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Townhouse Common Areas, and Community Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete disposition of a Townhouse. Every devise, encumbrance, conveyance, or other disposition of a Townhouse, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Townhouse, together with all appurtenant rights created by law or by this Declaration, including appurtenant Membership in the Owners Association as hereinafter set forth.

4.06. No Partition. The Townhouse Common Areas shall be owned in common by all of the Unit Owners, and no Unit Owner may bring any action for partition thereof.

4.07. Separate Mortgage by Unit Owners. Each Unit Owner shall have the right separately to mortgage or otherwise encumber his or her Unit. No Townhouse Unit Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Townhouse Common Areas, or Community Common Areas or any part thereof, except the undivided interest therein appurtenant to his or her Townhouse. Any mortgage or other encumbrance of any Townhouse within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure by private power of sale, judicial foreclosure, or otherwise.

4.08. Separate Taxation. Each Townhouse within the Project, including each Unit and appurtenant undivided interest in the Townhouse Common Areas and Community Common Areas, shall be deemed to be a separate parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah, or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority. For purposes of such assessment, the valuation of all common areas shall be apportioned among the Units in proportion to the undivided interest in all common areas appurtenant to such Units or Lots. All such taxes, assessments, and other charges on each respective Unit or Lot shall be separately levied against the Unit Owner thereof. No forfeiture or sale of any Unit or Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit or Lot.

4.09. Mechanics Liens. No labor performed or material furnished for use in connection with any Unit or Lot with the consent or at the request of any Owner or his or her agent or subcontractor shall create any right to file a statement

of mechanic's lien against the Unit or Lot of any other Owner not expressly consenting to, or requesting the same, or against any interest in any common areas, except the undivided interest therein appurtenant to the Unit or Lot of the Owner for whom such labor shall have been performed and such materials shall have been furnished.

4.10. Description of Townhouse. Every contract for the sale of a Unit and every other instrument affecting title to a Townhouse within the Project will describe a Unit by its identifying number or symbol as indicated on the final recorded plats. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Townhouse Common Areas and Community Common Areas, and to incorporate all of the rights incident to ownership of a Townhouse within the Project and all of the limitations on such ownership.

ARTICLE 5

EASEMENTS AND THIRD PARTY RIGHTS

5.01. Easements Reserved by Declarant. Declarant hereby reserves and establishes the following:

(a) Construction Easements and Related Rights. Declarant hereby reserves the right from time to time to construct any improvements shown on the Concept Map, and to construct any improvement on property owned by Declarant and on the Common Elements, any common Areas and any limited common areas including, without limitation, the right to establish and use nonexclusive perpetual utility, access, Trails and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Land, Lot, Common Elements, Townhouse Common Areas, Community Common Areas and Limited Common Areas for uses including, but not limited to access roads, paths, sidewalks, and Trails; and facilities necessary or useful for signage; mailbox structures; landscaping, sprinkler systems and other changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls and other road way supports; lighting; signage; infrastructure and to create other reservations, exceptions and exclusions in the best interest of the Owners Association and for the benefit of the Owners.

(b) Landscaping Easements. Declarant hereby reserves an easement across the Land including the Lots, Common Elements, Townhouse Common Areas, Community Common Areas and Limited Common Areas except the portions thereof occupied by improvements to:

(i) revegetate, beautify or maintain portions of Land located adjacent to road rights of way;

(ii) beautify and maintain portions of Land to the extent necessary, in Declarant's judgment, or

(iii) revegetate disturbed portions of the Land in order to control erosion, to beautify the Land or to restore the Land to a natural condition after damage by natural or man-made causes. This paragraph reserving rights to landscape or revegetate shall not create an obligation on the part of Declarant to landscape or revegetate any portion of the Land. Further, in the event any such landscaping or revegetation is undertaken by Declarant, the Declarant shall not be obligated to guarantee the survival of or to maintain any landscaping or vegetation installed.

(c) Easements for Offices. Declarant hereby reserves the right to construct and maintain offices, booths or other structures for administrative, sales and promotional purposes.

5.02. Easements for Encroachments. If any part of the Townhouse Common Areas, or Community Common Areas encroaches or shall hereafter encroach upon any Unit or Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Common Areas or any part of a Unit shall hereafter encroach on real property now owned by the Declarant outside the boundaries of the Land, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Building or any improvements constructed or to be constructed within the Project, by error in the Concept Map, by settling, rising, or

shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

5.03. Easements for Maintenance, Cleaning and Repair. Some of the Townhouse Common Areas are or may be located within the Units or may be conveniently accessible only through the Units or Limited Common Areas. The Owners Association shall have the irrevocable right to have access to and an easement through each Unit and to all Townhouse Common Areas, Community Common Areas, and Limited Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement thereof, including but not limited to the furnishing of utility services within the Building and to the units such as conduits, ducts, utility lines, utility pipes, utility systems, vents, chutes and flutes for making emergency repairs at any time therein necessary to prevent damage to the Common Areas, Limited Common Areas or to any Unit. In addition, agents of the Owners Association may enter any Unit or Limited Common Area when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction, or reconstruction for which the Owners Association is responsible. Such entry shall be made with as little inconvenience to the Unit Owners as practicable, and any damage caused thereby shall be repaired by the Owners Association with funds from the Common Area Expense Fund.

5.04. Right to Ingress, Egress and Support. Each Unit Owner shall have the right to ingress and egress over, upon, and across the Limited Common Areas appurtenant to such Unit and such rights shall be appurtenant to and pass with title to each Townhouse.

5.05. Owners Association's Right to Use Common Areas. The Owners Association shall have an easement to make such use of the Townhouse Common Areas, or Community Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Townhouse Common Areas (other than Limited Common Areas) facilities for use by Unit Owners generally or by the Owners Association and its agents exclusively.

5.06. Easement Deemed Created. All conveyance of Townhouses within the Project hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific references to such easements appear in any such conveyance.

5.07. Benefit of Owners Association. Declarant hereby grants to the Owners Association, its licensees, invitees, lessees, successors and assigns, a nonexclusive, perpetual easement on, over, upon, across, above, under and through the Land, the Project, and each portion thereof to (i) exercise any right held by the Owners Association under this Declaration, Bylaws, Rules and Regulation or other instrument, and (ii) perform any obligation imposed upon the Owners Association by this Declaration or any other Owners Association documents. Notwithstanding the foregoing, the Owners Association shall not enter upon any Unit or Lot without reasonable prior notice to the Owner of the same, except in cases of emergency.

5.08. Other Easements. The Project, and the Land shall be subject to the following easements in addition to those created in this Declaration.

(a) Easements on Concept Maps and of Record. The Project shall be subject to all easements shown on the Concept Map, and to all easements of record.

(b) Easements for Parking. Temporary guest or recreational parking shall be permitted within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Owners Association is hereby empowered to establish "parking" and "no parking" areas as well as to enforce these parking limitations by all means lawful for such enforcement including the removal of any violating vehicle by those so empowered.

(c) Every Common Area. Declarant hereby reserves and covenants for itself, and the Association, easements for the use, improvement and maintenance of every element of the project, including, but not limited to, the Townhouse Common Areas, Limited Common Areas, and Community Common Areas.

(d) Easements for Public Service Use. Declarant hereby reserves and covenants for itself and all future Owners within the Tuscan Hills project, easements for city, county, state and federal public services, and for utilities.

ARTICLE 6

RESTRICTIONS

6.01. Residential Use. All Units and Lots within the Project shall be used exclusively for residential and for no other purpose, subject to the provisions of this Declaration, the Development Agreement, and to any Rules and Regulations promulgated pursuant to this Declaration.

6.02. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on, in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or which may cause disturbance or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

6.03. Restrictions on Signs. All signs must comply with applicable City sign ordinances and regulations and be prior approved by the Owners Association in writing prior to installation. No signs, flags, or advertising devices of any nature, including without limitation, realty, for sale, commercial, political, informational, or directional signs or devices, shall be erected or maintained on any part of the Project, without prior inspection and written approval of the Board, and as applicable; City approval except as may be necessary temporarily to caution or warn of danger. If the Owners Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Owners Association.

6.04. Pets and Animals. No animals or reptiles of any kind shall be raised, bred or kept in any Unit or in the Townhouse Common Areas, except two domestic animals may be kept in any Unit provided that they are not kept, bred, or maintained for any commercial purposes; and provided further that any domestic animal causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the property subject to these restrictions upon ten (10) days written notice from the Board. In no event shall any pet be permitted in any portions of the Townhouse Common Areas, or Community Common Areas, unless carried or on a leash. Each Unit Owner who keeps a pet in a Unit shall indemnify and hold all other Unit Owners harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having a pet in the Project. Each Lot Owner who keeps a pet in a house on a Lot shall indemnify and hold all other Unit and Lot Owners harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having a pet in the Project. This provision 6.04 may be altered or changed by any Rules or Regulations promulgated by the Board.

6.05. No Alterations. No Owner shall, without the prior written consent of the Owners Association in each specific instance, make or cause to be made any alteration, addition, removal, or improvement in or to the Community Common Areas, Townhouse Common Areas, Common Elements or Limited Common Areas, or any part thereof, or do any act that would impair the structural soundness or integrity of the Buildings or other improvements, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Project.

6.06. No Obstructions. No Unit Owner shall obstruct the Community Common Areas, Townhouse Common Areas, Common Elements or Limited Common Areas, or any part thereof. No Unit Owner shall store or cause to be stored in the Community Common Areas, Townhouse Common Areas, Common Elements or Limited Common Areas any property whatsoever, unless the Owners Association shall consent thereto in writing.

6.07. No Overloading. No Townhouse Unit Owner shall bring anything into his or her Unit or permit anything to be done in his or her Unit that will cause damage to the Building. No Townhouse Unit Owner shall overload the floor of his or her Unit. No Townhouse Unit Owner shall permit the use or operation in his or her Unit of any equipment, machinery, or other apparatus that will in any manner injure, vibrate, or shake the Building, adjoining Units, or portions thereof.

6.08. Prohibition of Damage and Certain Activities. Except with the prior written consent of the Board, nothing shall be done or kept in any Unit, Lot, in the Townhouse Common Areas, Community Common Areas, Limited

Common Areas, Common Elements or in any part of the Project that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over that which the Owners Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Community Common Areas, Townhouse Common Areas, Limited Common Areas, Common Elements or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Townhouse Common Areas, Community Common Areas, Limited Common Areas, Common Elements or any part thereof shall be committed by any Owner or the guests, tenants, invitees, licensees of any Owner, and each Owner shall indemnify and hold harmless the Owners Association, the Declarant, and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees, or invitees of such Owner.

6.09. **Business Activities.** A Unit or a Lot shall not be used for any business, trade, garage sale, rummage sale, or similar activity without the express permission of the Owners Association, except that an Owner or resident may conduct business activities within the Unit or Lot so long as; (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit or Lot; (b) the activity conforms to all zoning requirements; (c) the activity does not involve regular visitation of the Unit or Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Project; and (d) the activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. This Section shall not apply to any activity conducted by the Declarant or a merchant Builder approved by the Declarant with respect to its development and sale of the Units or its use of any Unit, which it owns within the Project.

6.10. **Trucks, Trailers, Campers and Boats.** No motor vehicle classed by manufacturer rating as exceeding one-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Unit or on any street in Tuscan Hills so as to be Visible From Neighboring Property, or visible from any Common Area, or the streets; provided, however, the provision of this Section shall not apply to (i) pickup trucks not exceeding one-ton capacity with camper shells not exceeding nine feet in height measured from ground level and mini-motor homes not exceeding nine feet in height and twenty four feet in length which are parked as provided in Section 6.12 below and are used on a regular and recurring basis for basic transportation, or (ii) trucks, trailers and campers parked in an approved recreational vehicle storage area or other approved areas designated for such parking.

6.11. **Motor Vehicles.** No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Unit, Lot, Common Area, Limited Common Area or Common Elements and no inoperable vehicle may be stored or parked on any such Lot, Common Area, Limited Common Area or Common Elements Unit, parcel or street, so as to be visible from neighboring property or to be visible from the Common Areas or streets; provided however that the provisions of this Section shall not apply to (i) emergency vehicle repairs; (ii) temporary construction shelters or facilities maintained during and used exclusively in connection with the construction of any Improvements approved by the Owners Association; (iii) vehicles parked in garages on Units so long as such vehicles are in good operating condition and appearance and are not under repair; (iv) the storage of such vehicles in an area designated for such purposes; and (v) non-commercial vehicle repair within a garage which is closed except as necessary for ingress and egress.

6.12. **Parking.** It is the intent of the Declarant to restrict on-street parking as much as possible. Vehicles of all Owners and residents, and of their employees, guests and invitees, are to be kept in garages, residential driveways of the Owner and other permitted parking areas as determined by the Board and promulgated as part of the Rules and Regulations; provided however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking is otherwise prohibited. Recreational vehicles shall be parked in covered garages, or screened RV pads behind the front plane of the house, or parked as otherwise approved by the ACC, except for limited periods in residential driveways or other designated parking areas as determined by the Board and promulgated as part of the Rules and Regulations.

6.13. **Roofs.** To the full extent permissible under state and federal law, no apparatus, structure or object shall be placed on the roof of a Unit without the prior written consent of the Board. Any apparatus, structure or object approved by the Owners Association for placement on the roof of the Unit shall be mounted on the rear of the roof so that such

apparatus or object is below the highest ridge on the roof and is not Visible from neighboring property and is not visible from any street by a person standing anywhere on the curb or street in front of the Dwelling Unit or at the rear or sides of the Units backing upon any open space or public right of way. No air conditioning units or evaporative coolers extending from windows or protruding from roofs are permitted.

6.14. Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project and with the advance written consent of the Owners Association, the provisions, covenants, conditions, and restrictions contained in this Declaration may be waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which will result in a violation of any said provisions, covenants, conditions, or restrictions upon completion of the construction.

6.15. Nightly Rental/Settlement Agreement. Each Single-Family Lot and Townhouse Unit or Lot in Tuscan Hills shall be conveyed subject to a deed restriction disallowing rentals of less than 30 days duration.

6.16. Authority of ACC. Nothing in this Section 6 is meant to abridge the right of the Association and/or the ACC to make rules and regulations regulating and modifying anything in this Section 6, including the authority to make exceptions to any rule or regulations under the dominion of the ACC.

ARTICLE 7

THE OWNERS ASSOCIATION

7.01. Membership. Each Unit and Lot Owner shall be entitled and required to be a Member of the Owners Association; Membership shall begin immediately and automatically upon becoming a Unit Owner and shall terminate immediately and automatically upon ceasing to be a Unit Owner. If a title to a Townhouse, or Lot, is held by more than one person, the Membership appurtenant to that Townhouse, or Lot, shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Townhouse or Lot is held. A Unit or Lot Owner shall be entitled to one Membership for each Townhouse or Lot owned by him or her. Each Membership shall be appurtenant to the Townhouse or Lot to which it relates and shall be transferred automatically by conveyance of that Townhouse. Ownership of a Townhouse or Lot within the Project cannot be separated from Membership in the Owners Association appurtenant thereto, and transfer of the Unit or Lot by devise, encumbrance, conveyance, or other disposition, respectively transfers the Unit or Lot Owner's Membership in the Owners Association and rights appurtenant thereto. No person or entity other than a Unit or Lot Owner may be a Member of the Owners Association, and Membership in the Owners Association may not be transferred except in connection with the transfer of a Townhouse or Lot.

7.02. Board. The Board will be vested by and with the rights of the Owners Association as described hereunder. Until such time as the responsibility for electing the Board is turned over to the Unit Owners in accordance with Utah law, the Declarant shall have the exclusive right to appoint and to remove all Board Members. This exclusive right shall terminate after the first to occur of the following:

- (a) Twelve years from the date on which this Declaration is recorded, or
- (b) After Units to which one hundred percent of the undivided interest in the Common Areas appertain have been conveyed.
- (c) The determination of the Declarant in its sole discretion.

7.03. Votes. Each respective Townhouse and Lot shall be entitled to one (1) vote. The number of votes appurtenant to each Townhouse and Lot, as set forth herein, shall have a permanent character and shall not be altered without the unanimous written consent of all Unit Owners expressed in a duly recorded amendment to this Declaration.

7.04. Amplification. The provisions of this Article 7 may be amplified by the Articles of Incorporation and Bylaws of the Owners Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Unit or Lot Owners set forth in this Declaration.

7.05. Homestead Waiver. Each Unit and Lot Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect from time to time hereafter.

7.06. Declarant Assessment. Notwithstanding any other provision in this Declaration to the contrary, the Declarant is excluded from Owners Association Assessments for any Units it owns. There shall be no obligation on behalf of the Declarant to pay Assessments on any Units owned by Declarant or its assigns.

ARTICLE 8

CERTAIN RIGHTS AND OBLIGATIONS OF THE OWNERS ASSOCIATION AND BOARD

8.01. The Common Areas. The Board, shall be responsible for the exclusive management and control of all common areas and all improvements thereof (including any common facilities), and shall keep the same in good, clean, attractive, safe, and sanitary condition, order, and repair; provided, however, that unless otherwise stated herein, each Unit or Lot Owner shall keep the Limited Common Areas designated for use in connection with his or her Unit, if any, in a clean, sanitary, and attractive condition. The Owners Association shall be responsible for the maintenance and repair of the Community Common Areas, including without limitation painting thereof, repair and replacement of exterior trim, roofs and fences, maintenance of landscaping, walkways, driveways, and parking areas. The Board shall also be responsible for maintenance, repair, and replacement of any Townhouse Common Areas within the Buildings, if any; Townhouse owners are financially responsible for the maintenance of the exterior of their Units consistent with ACC guidelines. All goods and services procured by the Board in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund. The Board will assess the Townhouse Unit owners collectively for repairs and maintenance of the Townhouse Common Areas and Townhouse Limited Common Areas; the Lot Owners will not be assessed to pay for the same. Both the Townhouse Owners and the Lot Owners will be assessed to construct and maintain the Community Common Areas, and any other common areas which do not include the Townhouse Common Areas or the Townhouse Limited Common Areas.

8.02. Manager. The Board may by written contract delegate in whole or in part to a Manager such of the duties, responsibilities, functions, and powers hereunder of the Owners Association as are delegable. The services of any Manager retained by the Board shall be paid for with funds from the Common Expense Fund. Appropriate fidelity bond coverage may be required for any employee of the Manger who handles funds of the Owners Association. Any management agreement or contract providing for services of Declarant for the Project will be terminable by the Owners Board for cause upon thirty (30) days written notice thereof, and such agreement may be terminated by either party without cause and without payment of a termination fee on ninety (90) days written notice. The term of any such agreement may not exceed three years, renewable by agreement of the parties for successive three year periods.

8.03. Miscellaneous Goods and Services. The Board may, obtain and pay for the services of such personnel as the Board shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Owners Association or by any person or entity with whom or with which it contracts. The Owners Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board may, acquire and pay for out of the Common Expense Fund: water, sewer, garbage collection, electrical, gas, other necessary or desirable utility services for the Common Areas (and for the Units to the extent not separately metered or billed), insurance, bonds, and other goods and services common to the Units.

8.04. Real and Personal Property. During the time when the Declarant may appoint the Board, the Owners Association may acquire, real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise without limitation, and may assess all Owners for the Same, however, after the Declarant has withdrawn from the administration of the Owners Association, any disposition of any real, personal or mixed property by the Owners Association wherein the value of such property exceeds \$5,000 must be approved by a vote

of at least fifty one percent (51%) of the Total Votes of the Owners Association at a meeting duly called for that purpose. All common property shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of the fund.

8.05. Rules and Regulations. The Owners Association may create any Board, or committee and vest the same with any authority of the Owners Association, and may, from time to time, make reasonable Rules and Regulations governing the use of the Units, Lots, the Common Areas, the Limited Common Areas, and all parts of the Project, which Rules and Regulations shall be consistent with the rights and duties established by this Declaration. The Board on behalf of the Owners Association may take judicial action against any Owner to enforce compliance with such Rules and Regulations or other obligations of such Owner arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Owners Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

(a) Each Owner shall comply strictly with all Rules and Regulations adopted by the Owners Association for the governance of the Units, Lots, the Common Areas, Limited Common Areas and the Project, as such Rules and Regulations may be modified, amended, and construed from time to time by the Owners Association in the sole discretion of its Board.

(b) The Rules and Regulations may restrict and govern the use of any area by any Owner or resident or the family of such Owner or by any invitee, license or tenant of such Owner; provided, however, that the Rules and Regulations shall not discriminate among Owners and shall not be inconsistent with this Declaration.

(c) Notwithstanding any provision in this Declaration to the contrary, no rule, regulation or action of the Owners Association, Board or Manager shall unreasonably impede Declarant's right to develop the Property.

(d) NOTWITHSTANDING ANYTHING ELSE HEREIN, THE USE OF UNITS, LOTS AND EVERY TYPE OF COMMON AREAS IS LIMITED BY THE RULES AND REGULATIONS AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS OR HER UNIT CAN BE AFFECTED BY THIS PROVISION AND THAT THE RULES AND REGULATIONS MAY CHANGE FROM TIME TO TIME, THIS INCLUDES CHANGES IN POLICIES AND PRACTICES BY THE ACC. PURCHASERS OF UNITS AND LOTS ARE ON NOTICE THAT THE BOARD OR ACC MAY HAVE ADOPTED CHANGES TO THE RULES AND REGULATIONS, COPIES OF THE CURRENT RULES AND REGULATIONS MAY BE OBTAINED FROM THE OWNERS ASSOCIATION.

8.06. Granting Easements. The Board may, without the vote or consent of the Unit Owners or of any other person, grant or create, on such terms as it deems advisable, utility and similar easements and rights way over, under, across, and through the Common Areas.

8.07. Snow Removal and Road Maintenance. The Board shall provide for snow removal within the Townhouse Common Areas and the Common Areas, and shall provide for road maintenance for all roads, developed recreation areas, and walking paths within the Project not dedicated to the City.

8.08. Statutory Duties and Powers. All duties, responsibilities, rights, and powers imposed upon or granted to the Board, Association, "Management Committee" or to the "Manager" by statute, shall be duties, responsibilities, rights, and powers those parties hereunder

8.10. Implied Rights. The Owners Association may exercise any right, power, or privilege given to it expressly by this declaration or by law, and every other right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

8.11. Rule Making for Architectural Guidelines. The Board shall appoint a three member committee (the "Architectural Control Committee" or "ACC"), the function of which shall be to insure that all sizes and exteriors of Units, houses, and Lots, and landscaping within the project harmonize with existing surroundings and structures. The ACC need

not be composed of Owners. If such a committee is not appointed, the Board, or the Association itself shall perform the duties required of the ACC. ACC general guidelines for each phase of construction will be recorded as promulgated; ACC guidelines for Phases 1 and 2 are attached as Exhibit "C" hereto.

a. No construction, whatsoever, which is visible from a neighbor's property or the Common Area shall be constructed, maintained, or accomplished, and no alteration, repainting, or refurbishing of the same shall be performed, unless complete plans, and specifications therefore have first been submitted to and approved by the ACC.

b. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the ACC shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots or Units within the Project conform to and harmonize with existing surroundings and structures. The ACC will formulate architectural guidelines and procedures. The adopted guidelines and procedures shall be incorporated in the Book of Resolutions and the ACC or the Board, as the case may be, shall act in accordance with such guidelines and procedures.

c. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within 30 days after submission. In the event that the ACC fails to take any action within such period it shall be deemed to have approved the material submitted.

d. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the ACC shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same may be entitled to temporary use and occupancy of unimproved portions of the Common Areas in the vicinity of the activity.

e. Disclaimer of Liability. Neither the ACC nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject any plans, drawings or specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the property in the Project, or (d) any engineering or other defect in approved plans and specifications.

f. Waiver. The approval by the ACC of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the ACC to disapprove any similar plans and specifications.

g. Exceptions For the Declarant. The foregoing provisions of this article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas which occurs at any time during the 12 years following the date on which this Declaration is filed for record. Declarant shall further have the right to designate the location of and the design of any common area amenities including, but not limited to swim areas, walking trails, or any other recreational amenity provided that the Declarant shall not be required to provide any such amenities by virtue of this paragraph.

8.12. Rule Making, Generally. The Owners Association shall have the authority to make, change, and enforce all manner of rules governing the use of the Common Areas, and the Land.

ARTICLE 9

ASSESSMENTS

9.01. Agreement to Pay Assessments. Each Owner, by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Owners Association to pay to all assessments made for the purposes provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article 9.

9.02. Annual Assessments. Annual Assessments shall be computed and assessed against all Units and Lots in the Project as follows:

(a) Townhouse Common Area Expense. Annual Assessments for Townhouse owners shall include, and be based upon advance estimates of the cash requirements to provide for payment of all estimated expenses arising out of or connected with maintenance and operation of the Townhouse Common Areas. Such estimated expenses may include, among other things, the following: expenses of management; real property taxes and special assessments (unless and until the Townhouses are separately assessed); premiums for all insurance that the Owners Association is required or permitted to maintain hereunder, repairs and maintenance, wages for Owners Association employees, including fees for a Manager (if any); utility charges, including charges for utility services to the Units to the extent not separately metered or billed, legal

and accounting fees, any deficit remaining from a previous period, creation of an adequate contingency reserve, major maintenance reserve, and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Townhouse Common Areas that must be replaced on a periodic basis, and such extraordinary special assessments, and any other expenses and liabilities which may be incurred by the Owners Association for the benefit of the Unit Owners under or by reason of this Declaration. At a minimum, the Owners Association shall maintain a reserve fund of three month's of the Unit Owner's common expense assessments. Such shall constitute the Common Expense, and all funds received from assessments under this Section shall be part of the Common Expense/Operating Fund.

(b) Apportionment. Expenses attributed to the Townhouse Common Area Expense shall be apportioned among and assessed to all Unit Owners excluding the Declarant in proportion to their respective undivided interests in the Townhouse Common Areas.

(c) Common Area Expense Excluding the Townhouse Common Areas and Townhouse Limited Common Areas. All owners will be assessed in proportion to their respective undivided interests in the Common Areas excluding the Townhouse Common Areas and the Townhouse Limited Common Areas, but specifically including the Community Common Areas, expenses attributed to the construction and maintenance of those areas.

(c) Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year as determined by the Board. The Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expense for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(d) Notice and Payment. The Board shall give reasonable notice to each Owner of the amount of the Annual Assessment for the fiscal year against his or her Unit or Lot. The time for and interval of payment of installments may be changed by the Board. All unpaid installments of any Annual Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date each such installment becomes due, until paid. In addition, in the event that any installment of any Annual Assessment is not paid on the date such installment becomes due, it shall be subject to a penalty for late payment of two hundred dollars (\$200.00) for each such installment as it becomes due until paid. The failure of the Board to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

(e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including non payment of any Owner's assessment, the Board may, on behalf of the Owners Association: (i) use such a portion of the Reserve Fund as the Board deems necessary; and/or (ii) levy additional assessments in accordance with the procedures set forth in Section 9.03 below, except that the vote therein specified shall be unnecessary. Any additional assessments may be used to replenish the Reserve Fund to the amount existing therein just prior to the Board's use of the same.

(f) Separation of Financial Responsibilities. Notwithstanding anything else herein, it is the intent of this Declaration that the Lot owners shall not be responsible for the costs and expenses related to the Townhouses, Townhouse Common Areas, and Townhouse Limited Common Areas, which costs and expenses shall be carried by the Townhouse Unit Owners. Similarly, if any damage to a Unit results in an insurance payment to the Association which is thereafter routed to Unit Owners, such payment shall not be distributed to Lot Owners.

9.03. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Board may, on behalf of the Owners Association, levy, at any time and from time to time, an amount up to \$4,000.00 per Unit or Lot per year. Any Special Assessment over this amount shall upon affirmative vote of at least fifty one percent (51%) of the total votes of the Owners Association, be payable over such periods as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation common Expenses). This Section shall not be construed as an independent source of authority for the

Owners Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of each such Special Assessment and the time for payment shall be due in less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of 18% per annum from the date such portions become due until paid. In addition, in the event that any Special Assessment is not paid on the date such Special Assessment becomes due, it shall be subject to penalty for late payment of \$200.00. All funds received from assessments under this Section shall be a part of the Common Expense Fund.

9.04. Reimbursement Assessments. The Board may, subject to the provisions hereof, levy an Assessment against any Owner if the willful or negligent failure of the Owner or a related user to comply with this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations shall have resulted in the expenditure of funds by the Owners Association to cause such compliance. The amount of the Reimbursement Assessment shall be due and payable to the Owners Association thirty (30) days after notice to the Owner of the decision of the Board that the Assessment is owing. All unpaid portions of any Reimbursement Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such Reimbursement Assessment become due until paid. In addition, in the event that any Reimbursement Assessment is not paid on the date such Reimbursement Assessment becomes due, it shall be subject to penalty for late payment of \$200.00.

9.05. Lien for Assessments. All sums assessed to Owners of any Townhouse or Lot within the Project pursuant to the provisions of this Article 9, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Townhouse or Lot in favor of the Owners Association. To evidence a lien for sums assessed pursuant to this Article 9, the Board may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit or Lot, and a description of the same. Such a notice shall be signed and acknowledged by a duly authorized officer or agent of the Owners Association and may be recorded in the office of the County Recorder of Washington County, State of Utah. No notice of lien shall be recorded until: (i) there is a delinquency in payment of the assessment, and (ii) the subject Owner has been sent via certified mail to Owner's address as provided pursuant to Section 16.04 herein, a Notice of Delinquency which provides Owner a period of 30 days within which to cure the delinquency in Assessments and said Owner fails to cure the delinquency within the 30 days. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted under the laws of the State of Utah. In any foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including but not limited to reasonable attorneys' fees) and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Owners Association any assessments against the Townhouse which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board shall have the right and power on behalf of the Owners Association to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Unit or Lot in the name of the Owners Association.

9.06. Personal Obligation of Unit Owner. The amount of any Assessment against any Unit or Lot shall be the personal obligation of the Unit or Lot Owner to the Owners Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Owners Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his or her Unit or Lot or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Unit Owner shall pay the costs and expenses incurred by the Owners Association in connection therewith, including reasonable attorneys' fees.

9.07. Statement of Account. Upon payment of a reasonable fee not to exceed \$25.00 and upon written request of any Unit or Lot Owner, Mortgagee, or prospective purchaser of a Unit or Lot, within 10 business days, the Board shall issue a written statement setting forth the following: The amount of the unpaid assessments, if any, with respect to such Unit or Lot; the amount of the current Annual Assessments and the date or dates upon which installments thereof become due, less credit for advanced payments or prepaid items, including without limitation the Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Owners Association in favor of persons who rely thereon in good faith. In the event that the Board fails upon written request to issue such a written statement, any unpaid

assessments with respect to such Townhouse which become due prior to the written receipt of such written request by the Board shall become subordinate to a lien held by the person or entity requesting such statement.

9.08. Personal Liability of Purchaser. Subject to the provisions of Section 9.06, a purchaser of a Unit or Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Unit or Lot up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchasers right to recover from the seller the amount paid by the purchaser for such assessments.

9.09. Declarant Assessment. Notwithstanding any other provision in this Declaration to the contrary, the Developer and/or Declarant is excluded from paying Assessments for any Unit or Lot owned by it. There shall be no obligation on behalf of the Declarant to pay Assessments on any Units or Lots owned by Declarant or its designated agents.

9.10. Suspension. All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any Assessment duly established pursuant to this Article 9 or is otherwise in default hereunder or under the Bylaws or Rules and Regulations of the Owners Association or Lot Association where applicable.

9.11. Amendment of Article. This Article 9 shall not be amended unless the Unit or Lot Owners of at least two thirds (2/3) of the Units and Lots in the Project consent and agree to such amendment in a duly recorded instrument.

9.12. Hearing. Within thirty (30) from the date of an Assessment or penalty, upon written request, an affected Owner may request an informal hearing before the Board. The Board may establish reasonable Rules for conducting the hearing in accordance with this Declaration.

9.13. Tax Collection From Lot and Unit Owners by Washington County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Unit or Lot is a member of the Association and as part of his monthly assessment will be required to pay to the Association his prorata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration, or otherwise, Washington County shall be, and is, authorized to collect such prorata share (on an equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed so to do. In the event that the assessor shall separately assess Common Areas to the Association, the Board may require, in its discretion a special assessment to pay such taxes, or they may be included in the regular assessment budget.

ARTICLE 10

INSURANCE

10.01. Types of Insurance. The Owners Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah.

(a) Master Property Insurance. The Owners Association shall obtain and maintain a "master" or "blanket" Multi Peril policy of property insurance on the Common Areas of the project equal to a full replacement value (i.e., 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the Project with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and, if required by FNMA or FHLMC, Demolition and Contingent Liability from Operation of Building Laws Endorsements, an Increased Cost of Construction Endorsement, an Earthquake Damage Endorsement, and other endorsements as necessary. Such insurance shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, and such other risks as are customarily covered in similar projects and as are commonly required by private institutional mortgage investors for projects similar in construction, location and use. All policies of property insurance shall provide that, despite any provisions giving the insurance carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Owners Association (or any Insurance Trustee) or when in conflict with the provisions of any insurance Trust Agreement to which the Owners Association may be a party, or any requirement by law. Any blanket policy of property insurance shall contain

or have attached a standard mortgagee clause (without contribution) customarily used in the area in which the Project is located which must be endorsed to provide that any proceeds shall be paid to the Owners Association for the use and benefit of first mortgagees as their interests may appear. The Townhouse Owners will, and the Lot Owners will not pay for the insurance on the Townhouses, Townhouse Common Area, or Townhouse Limited Common Area.

(b) Public Liability Insurance. The Owners Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities, commercial spaces and public ways (if any) in the Project, with a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Owners Association or another Owner, with limits not less than \$1,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence including protection against water damage liability, liability for non owned and hired automobiles, liability for property of others, and such other risks as are customarily covered in similar projects. The scope of coverage also includes all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

(c) Workmen's Compensation Insurance. The Owners Association shall obtain and maintain workmen's compensation and employers' liability insurance and all other similar insurance with respect to employees of the Owners Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance or Bond. The Owners Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board, and employees and all others who are responsible for handling funds of the Owners Association. Such fidelity bonds shall meet the following requirements:

(i) all shall name the Owners Association as an obligee;

(ii) all shall be written in an amount equal to at least 100% of the estimated three (3) months operating expenses and reserves of the Project, (Exceptions to this requirement will be considered on a case by case basis);

(iii) all shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers;

(e) Flood Insurance. The Project is not located in an area identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. In the event that at some future time the Project should be declared to be in such a flood area, the Owners Association shall at that time obtain and maintain at all times a blanket policy of flood insurance that meets the then existing FHLMC/FNMA flood insurance requirements for similar projects. Such policy shall contain the standard mortgagee clause customarily used in the area in which the Project is located and provided that any proceeds shall be paid to the Owners Association for the use and benefit of mortgagees as their interest may appear.

(f) Other Insurance. Notwithstanding any other provisions contained herein to the contrary, the Owners Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for Townhouse development projects established by the Federal National Mortgage Association and the Government National Mortgage Association, so long as either is a mortgagee or Unit Owner of a Townhouse within the Project, except to the extent such coverage is not available or has been waived in writing by the Federal National Mortgage Association or the Government National Mortgage Association.

10.02. Insurance Policy Requirements. The Master Multi Peril Property, Public Liability and Flood Insurance policies obtained by the Owners Association pursuant to Section 10.01 shall be subject to the following:

(a) the named insured under any such policies shall be the Owners Association, as a trustee for the Owners, or its authorized representative, including any trustee with which such Owners Association may enter into any Insurance Trust Agreement, or any successor trustee, each of which shall be referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under these policies;

- (b) insurance coverage obtained and maintained pursuant to the requirement of Section 10.01 (a) and (b) shall not be brought into contribution with insurance purchase by the Unit or their mortgagees;
- (c) coverage must not be prejudiced by (i) an act or neglect of the Unit Owners when such act or neglect is not within the control of the Owners Association or (ii) any failure of the Owners Association to comply with any warranty or condition regarding any portion of the premises over which the Owners Association has no control;
- (d) coverage may not be canceled or substantially modified (including cancellation for non payment of premium) without at least thirty (30) days prior to written notice to any and all insured;
- (e) all policies must contain a waiver of subrogation by the insurer as to any and all claims against the Owners Association, the Unit Owner of any Townhouse Unit and/or their respective agents, employees or tenants, and of any defenses based on co insurance or on invalidity arising from the acts of the insured;
- (f) each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class A-6 or better;
- (g) policies shall be deemed unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against a Townhouse Unit Owner, his or her first mortgagee or any first mortgagee's designee or such designee's designee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent a Townhouse Unit Owner, his or her first mortgagee or any first mortgagee's designee or such designee's designee from collecting insurance proceeds; and
- (h) all policies of hazard insurance shall contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located.

10.03. Custody of Insurance Policies. Upon written request and payment of a \$10.00 processing fee, the Board shall provide a Townhouse Unit Owner, his or her first mortgagee or any first mortgagee's designee or such designee's designee, with a copy of the "master" or "blanket" policy of Multi Peril property insurance, including copies of endorsements to such policy as required by FHLMC or FNMA, and where applicable, a copy of any flood insurance policy, a copy of the comprehensive policy of public liability insurance an appropriate certificate or memorandum of insurance as to each Unit in the Project which is the subject of a mortgage being serviced for FHLMC and FNMA and all other insurance drafts, policies, notices, invoices and other similar documents.

10.04. Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Owners Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Owners Association may deem appropriate from time to time.

10.05. Unit Owner's Own Insurance. Each Unit and Lot Owner, at his or her own expense, shall procure and maintain at all times fire and extended coverage insurance covering the real and personal property of such Unit or Lot Owner and additional fixtures and improvements added by such Unit or Lot Owner against loss by fire and other casualties, including without limitation vandalism and malicious mischief. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Owners Association pursuant to this Article. Notwithstanding the provisions hereof, each Owner may obtain insurance at his or her own expense providing such other coverage upon his or her Unit or Lot, his or her personal property, for his or her personal liability, and covering such other risks as he or she may deem appropriate; provided that each such policy shall provide that it does not diminish the insurance carrier' coverage for liability arising under insurance policies obtained by the Owners Association pursuant to this Article. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Owners Association, the Declarant, the Manager, other Unit or Lot Owners, and their respective servants, agents and guests.

10.06. Review of Insurance. The Owners Association shall review annually the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or by such other qualified appraisers as the Owners Association may select.

ARTICLE 11

DAMAGE OR DESTRUCTION

11.01. Owners Association as Attorney in Fact. All of the Unit Owners irrevocably constitute and appoint the Owners Association their true and lawful attorney in fact in their name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Unit Owner shall constitute an appointment by said grantee of the Owners Association as his or her attorney in fact as herein provided. As attorney in fact, the Owners Association shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of a Unit Owner which may be necessary or appropriate to exercise the powers herein granted.

11.02. Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

11.03. Procedures. In the event any part of the Project is damaged or destroyed, the Owners Association shall proceed as follows:

(a) Notices to First Mortgagees. The Owners Association shall give timely written notice to any Institutional Holder of any first mortgage on a Unit in the event of substantial damage to or destruction of any Unit or any part of the Common Areas.

(b) Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Owners Association shall obtain complete and reliable estimate of the costs to repair and reconstruct that part of the Project damaged or destroyed.

(c) Sufficient Insurance. If the proceeds of the insurance maintained by the Owners Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

(d) Insufficient Insurance Less than 75% Destruction. If the proceeds of the insurance maintained by the Owners Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, and if less than seventy five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Owners Association shall levy a Special Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Assessment shall be allocated and collected as provided in Article 9 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

(e) Insufficient Insurance 75% or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, and if seventy five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed as provided in Section 11.03(c) hereof, if, but only if, within one hundred (100) days following the damage or destruction, the Unit Owners shall elect by a vote of at least seventy five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction. If, however, the Unit Owners shall not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction, the Association shall record in the office of the County Recorder of Washington County, State of Utah, a notice setting forth such facts. Upon the recording of such notice the following shall occur:

(i) The Project shall be deemed to be owned in common by the Owners;

(ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of the undivided interest previously owned by such Unit Owner in the Common Areas;

(iii) Any liens affecting any of the Lots or Units shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

(iv) The Project shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of any sale resulting from such suit for partition together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Unit Owners in a percentage equal to the percentage of undivided interest owned by each respective Unit Owner in the Common Areas, as set forth in Exhibit A hereto, after first paying out of the respective share of each Unit Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Unit Owner.

(f) In no event shall an Owner or any other party have priority over the Institutional Holder of any first mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

11.04. Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Unit Owners, and no consent or other action by an Unit Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before.

11.05. Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 11.03(c) and (d) hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair and reconstruction shall be made from insurance proceeds, if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of Ownership of the Common Areas.

11.06. Amendment of Article. This Article 11 shall not be amended unless the Unit Owners of at least two thirds (2/3) of the Townhouse Units in the Project consent and agree to such amendment by duly executed and recorded instruments.

11.07. Exclusion. Notwithstanding any provision in this Article 11 to the contrary, the Declarant does not appoint the Homeowners Association, its attorney-in-Fact nor give it authorization to make decisions on the Declarant's behalf.

ARTICLE 12

CONDEMNATION

12.01. Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof, or the common areas and facilities or any portion thereof, is made the subject matter of any condemnation or eminent domain proceedings or is otherwise sought to be acquired by a condemning authority, the Board shall give prompt written notice of any such proceeding or proposed acquisition to each Unit Owner in the Project and to any Institutional Holder of any first mortgage on a Unit in the Project.

12.02. Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Owners Association and shall be distributed by the Board, on behalf of the Association as herein provided.

12.03. Complete Taking. In the event the entire Project is taken by power of eminent domain, Townhouse ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Unit Owners in proportion to their respective undivided interests in the Common Areas. Such distribution shall be made by check payable jointly to the respective Unit Owners and their respective Mortgagees, as appropriate.

12.04. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(a) Allocation of Award. As soon as practicable, the Board shall, on behalf of the Association, apportion the condemnation award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of, or injury to, the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken) in proportion to their respective undivided interests in the Common Areas taken;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Unit Owners of those Townhouses that have not been taken, in proportion to their respective undivided interests in the Common Areas;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Owners Association determined to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute, or otherwise, the Owners Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Unit Owners and their respective Mortgagees, as appropriate; and

(vii) No provision of this Article 12 or any other provision in this Declaration, the Articles, or the Bylaws shall entitle the Unit Owner or other party to priority over any institutional holder of any first mortgage on such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement, or proceeds from any eminent domain or condemnation proceedings.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, Townhouse ownership pursuant hereto shall not terminate, but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Unit Owner thereof shall cease to be a Member of the Owners Association and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas.

(ii) If any partial taking results in the taking of a portion of a Unit and if no determination is made by the Board that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the fair market value of such remaining portion of the Unit shall be determined by the Board and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in proportion to the diminution in fair market value of such Unit resulting from the taking. The voting rights and undivided interest in the

Common Areas so divested from such Unit shall be reallocated to, and shall appertain to, such Unit and the other respective undivided interests in the Common Areas; provided, however, that such Unit shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence.

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Unit shall be reallocated to and shall appertain to the remaining Units in proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Unit shall thenceforth be part of the Common Area.

(iv) The Board shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 12.04 (b) ; provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board shall defer thereto and proceed in accordance therewith.

(c) **Repair and Reconstruction.** Any repair and reconstruction necessitated by condemnation shall be governed by its provisions specified in Article 11 hereof for cases of Damage or Destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

ARTICLE 13

OBSOLESCENCE

13.01. **Adoption of Plan.** Subject to the provisions of Section 16.12 and after the Declarant no longer holds title to a Unit in the Project, Unit Owners holding seventy five percent (75%) or more of the Total Votes of the Owners Association may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction of the Project. Written notice of adoption of such a plan shall be given to all Unit Owners and Institutional Holders.

13.02. **Payment for Renewal and Reconstruction.** The Owners Association shall levy a Special Assessment sufficient to provide funds to pay the estimated expenses of renewal or reconstruction. Such Special Assessment shall be allocated and collected as provided in Section 9.03 hereof. Further levies may be made in like manner if the amounts collected prove insufficient to pay the actual expenses of such renewal or reconstruction. In the event the amounts collected pursuant hereto are in excess of the amounts required for renewal or reconstruction, such excess shall be distributed to the Owners in proportion to their respective percentages of ownership of the Common Areas.

13.03. **Sale of Project.** Subject to the provisions of Section 14 hereof and upon the sale by Declarant of all Units in the Subdivision, the Owners may at any time that the Project is declared obsolete hereunder, by an affirmative vote of at least seventy five percent (75%) of the Total Votes of the Owners Association, at a special meeting of the Members of the Owners Association duly called for such purpose, elect to sell or otherwise dispose of the Project. In such event, the Board shall forthwith record in the office of the County Recorder of Washington County, State of Utah, a notice setting forth such facts, and upon the recording of such notice by the Board, the Project shall be sold or otherwise disposed of by the Board as attorney in fact for all of the Unit Owners. Such action shall be binding upon all Unit Owners and each Unit Owner shall have the duty to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary or appropriate to effect such sale or other disposition of the Project. The proceeds of such sale or disposition shall be apportioned among the Owners in proportion to their respective undivided interests in the Common Areas, and such apportioned proceeds shall be paid into separate accounts, each such account representing one unit or lot. Each such account shall remain in the name of the Owners Association, and shall be further identified by the designation of the property and name of the Unit Owner. The Board, as attorney in fact, shall use and disburse the total amount of each such account, without contribution from one account to another, first to the payment of valid tax and special assessment liens on the Unit or Lot in favor of any governmental assessing authority, second to the payment of any Institutional Holder of a first mortgage lien on the Townhouse, third to the payment of assessments made pursuant to this Declaration, fourth to the payment of other holders of liens or encumbrances on the Unit or Lot in the order of priority of their liens, and the balance remaining, if any, to the respective Owner.

13.04. Amendment of Article. This Article 13 shall not be amended unless the Unit Owners of seventy five percent (75%) of the Units and Lots in the Project and at least seventy five percent (75%) of all Institutional Holders which have a first mortgage lien on any Unit in the Project, based on one vote for each mortgage, consent and agree to such amendment by duly executed and recorded instruments.

ARTICLE 14

MORTGAGE PROTECTION

14.01. Matters Requiring Prior Mortgagee Approval. Except as provided by the statute in case of condemnation or substantial loss to the Units and/or Common Areas of the Project, unless at least eighty percent (80%) of all First Mortgagees (including Institutional Holders) which hold first mortgage liens on Townhouse Units in the Project (based upon one vote for each First Mortgage owned) have given their prior written approval, the Owners Association shall not be entitled to:

(a) Abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) Cause any amendment to be made to the Declaration, the Articles, or the Bylaws, which would change the pro rata interest or obligations of any individual Townhouse for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of each Townhouse in the Common Areas.

14.02. Matters That May Require Prior Mortgagee Approval. Except as provided by statute in case of condemnation or substantial loss to the Units and/or Common Areas of the Project, unless at least eighty percent (80%) of the First Mortgagees (based upon one vote for each First Mortgage owned), and, all of the Unit Owners of the individual Townhouse Units have given their prior written approval, the Owners Association shall not be entitled to:

(a) Partition or subdivide any Townhouse Unit;

(b) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas of the Project; or

(c) Use hazard insurance proceeds for losses to any Townhouse property (whether to the Townhouse Units, or to the Common Areas) for other than repair, replacement or reconstruction of such Townhouse property, except as provided by the statute in case of substantial loss to the Townhouse Units and/or Common Areas of the Project.

14.03. Prior Liens Relate Only to Individual Units. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Townhouses and not to the Project as a whole.

14.04. Subordination of Common Expense Lien. Any lien which the Owners Association may have on any Unit in the Project for the payment of Common Expense assessments attributable to such Unit shall be subordinate to the lien of equivalent security interest of any first mortgage on the Unit recorded prior to the date on which any such Common Expense assessments became due.

14.05. Information Made Available to Mortgagee Upon Request. Any Institutional Holder of a first mortgage on a Unit in the Project shall, upon request, be entitled to: (a) inspect the books and records of the Owners Association during normal business hours; and (b) receive an annual audited financial statement of the Owners Association within 90 days following the end of any fiscal year of the Project; and (c) written notice of all meetings of the Owners Association and be permitted to designate a representative to attend all such meetings.

14.06. Priority of Mortgagee in Event of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, the Holder of any first mortgage on a Unit shall be entitled to timely written notice of any such damage or destruction and no provision of the Declaration, Articles, or Bylaws or any amendment thereto shall entitle the Unit Owner or other party to priority over such holder with respect to the distribution to such Unit of any

insurance proceeds.

14.07. Priority of Mortgagee in Event of Condemnation. If any Unit or portion thereof, or the Common Areas or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Holder of any first mortgage on a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition and no provision of the Declaration, Articles, or Bylaws or any amendment thereto, shall entitle the Unit Owner or other party to priority over such holder with respect to the distribution to such Unit of the proceeds of any award or settlement.

14.08. Mortgagee Rights in Event of Foreclosure. Each Holder of a first mortgage lien on a Unit who comes into possession of the Unit by the foreclosure of a mortgagee, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the time such holder comes into possession of the Unit, except for the claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units in the Project, including the mortgaged Unit.

14.09. Notice to First Mortgagees. The Owners Association shall give Institutional Holders of first mortgages who have requested in writing such notice, prompt notice of any default in the Unit mortgagor's obligations under the Townhouse documents not cured within thirty (30) days of default.

14.10. No Right of First Refusal. No "right of first refusal" shall be included in or added by amendment to the Declaration, Articles or Bylaws which would impair the rights of any holder of a first mortgage on a Unit in the Project to:

- (a) foreclose or take title to a Townhouse Unit pursuant to the remedies provided in the mortgage and/or pursuant to the laws of the State of Utah, or
- (b) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or
- (c) interfere with a subsequent sale or lease of a Unit so acquired by the mortgage.

14.11. Identification of Mortgagee. A Unit Owner who mortgages his or her Unit shall, within ten (10) days after such mortgage has been executed, notify the Board of the name and address of his or her mortgagee for purposes of the mortgagee's receipt of Notices hereunder.

14.12. Amendment. No provision of this Article 14 shall be amended without the prior written consent of at least eighty percent (80%) of all First Mortgagees (including all Institutional Holders which have a first mortgage on any Townhouse Unit in the Project), based on one vote for each mortgagee.

ARTICLE 15

COMPLIANCE WITH DECLARATION AND BYLAWS

15.01. Compliance. Each Unit Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Owners Association, rules and regulations promulgated by the Owners Association, and the decisions and resolutions of the Owners Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Owners Association or, in a proper case, by an aggrieved Unit Owner.

15.02. Enforcement and Remedies. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration or in any Supplemental or Amended Declaration, with respect to the Owners Association or Townhouses and Lots within the Project shall be enforceable by the Declarant or by any Unit Owner of a Townhouse or Lot within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to a person or entity or property of a person or entity other than the Owners Association

or the Declarant shall be enforceable by the Declarant or by the Owners Association or, in a proper case, by an aggrieved Unit Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

ARTICLE 16

GENERAL PROVISIONS

16.01. Intent and Purpose. The provisions of this Declaration, and any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Single Family and Townhouse Project. Failure to enforce any provision, restriction, covenant, or condition contained in this Declaration, or in any Supplemental or Amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

16.02. Construction. The provisions of this Declaration shall be in addition and supplemental to the provisions of any development agreement with the City and all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to expand, limit, or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions hereof.

16.03. Attorney Fees. In the event any action or proceeding is brought to enforce the provisions of this Declaration, the By-Laws, or any Rules or Regulations, the prevailing party shall be entitled to recover its costs and reasonable attorney fees, whether such sums are expended with or without suit, at trial or on appeal.

16.04. Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Owners Association his or her current mailing address. All notices, demands, and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. certified mail, postage prepaid, addressed to the Owner at his or her registered mailing address or, if no address has been registered, to the Unit or Lot address of such Owner. All notices, demands, and other communications to the Owners Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. certified mail, postage prepaid, addressed to the Owners Association at its current address of 96 North 500 West, #150, Bountiful, Utah 84010, and a copy to James C. Ziter at the business address of, 3760 South Highland Drive, Suite 500, Salt Lake City, Utah, 84106 or to such other address as the Owners Association may hereafter specify to the Unit Owners in writing. Any notice, demand or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. certified mail, postage prepaid and in the form provided for in this Section, as the case may be.

16.05. Audit. Any Owner may at any reasonable time, upon appointment and at his or her own expense, cause an audit or inspection to be made of the books and records maintained by the Owners Association. The Owners Association, at the expense of the Common Expense Fund, may obtain an audit, by public accountants, of all books and records pertaining to the Project at no greater than annual intervals and copies thereof shall be furnished to the Unit Owners.

16.06. Amendment. Except as otherwise provided herein and after the Declarant transfers the Common Areas to the Owners Association, this Declaration may be amended if Unit Owners holding at least two thirds (2/3) of the Total Votes in the Owners Association consent and agree to such amendment by instruments which are duly recorded in the office of the County Recorder of Summit County, State of Utah.

16.07. Effective Date. This Declaration shall take effect upon recording.

16.08. Agent for Service. The name and address of the person to receive service of process in all causes of action shall be the registered agent and address of the Owners Association as shown on the official corporate records maintained in the office of the Division of Corporations of the Utah Department of Commerce. On the date of this

Declaration, the registered agent of the Owners Association is Guy Haskell, 96 North 500 West, #150, Bountiful, Utah 84010.

16.09. Limitation on Owners Association's Liability. The Owners Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Owners Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Project, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any parts of the Building or its drains, pipes, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Owners Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules, or order of any governmental authority.

16.10. Unit Owner's Obligation. All obligations of a Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he or she may be leasing, renting, or selling under contract his or her Unit or Lot. The Owner within the Project shall have no obligation for expenses or other obligations accruing after he or she conveys such Unit or Lot.

16.11. Model Units, Sales Offices and Advertising Signs. Declarant and Declarant's duly authorized agents, representatives and employees shall have the right to establish and maintain model Units and sales offices on the land within the Project, and the right to use such model Units and sales office during the period that Units in the Project remain unsold. Declarant reserves the right to relocate the same from time to time within the Project. Declarant further reserves the right to maintain advertising signs on the Project and to place the same in any location, and to relocate, replace, and remove the same at the sole discretion of Declarant during the period that Units in the project remain unsold.

16.12. Termination. The prior written approval of (a) at least two thirds (2/3) of all First Mortgagees (including Institutional Holders) which hold first mortgage liens on Units or Lots in the Project, based on one vote for each First Mortgage owned, and (b) all of the Owners in the Project shall be required before the Project may be abandoned or terminated except as provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

ARTICLE 17

ADDITIONAL RESERVED RIGHTS AND DISCLAIMERS

17. The Declarant currently has approval for single family Lots, and Townhouse Units encompassing two phases of the development, however, it is contemplated that the Declarant may acquire and annex into this Declaration which right is now expressly reserved, other contiguous property containing additional Units and Lots. Declarant hereby expressly reserves to itself and its successors and assigns the following described rights, which include development rights and special Declarant rights, any one or more of which rights may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the recording of this Declaration in the County Recorder and ending on the date of termination of such rights established herein. It is expressly understood that Declarant shall not be obligated to exercise any of these reserved rights.

Except as limited by this Article, such reserved rights may be exercised upon or in connection with all or any portion of the Property and/or any later annexed or adjoining property. Such rights may be exercised with respect to different parcels or Lots at different times, and in connection therewith Declarant hereby states that (i) no assurances are made regarding the boundaries of said different parcels or Lots with respect to the order in which such parcels or Lots may be subjected to the exercise of these reserved rights, even if a reference to a phase or phasing appears in a legal description, Concept Map, Development Agreement or other instrument relating to the Property, and (ii) if a particular reserved right is

exercised in any portion of the real estate subject to that reserved right, that reserved right is not required to be exercised in all or any portion of the remainder of the real estate.

The reserved rights hereinafter set forth may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Lots, Units, Common Elements and the Property hereafter made, whether by Declarant or otherwise, in whole or in part shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the rights reserved by and to Declarant in this Article and Declaration, even though no specific reference to such rights appears in the conveyance instruments. Nothing in this Article shall limit or impair any other rights granted or reserved to Declarant by other provisions of this Declaration or of any Supplement or Amended Declaration. The following rights are hereby reserved to Declarant and its successors and assigns.

(a) Completion of Improvements. The right throughout the Project to complete Improvements as required by the City, or indicated on any Plat or this Declaration, and as such Plats and the Declaration may be supplemented or amended from time to time. Furthermore, the right to construct and complete Improvements, required by the terms of the Development Agreement and by the terms of any other Subdivision Improvement Agreements that may hereafter be executed by Declarant in connection with future phases or annexations to the Project, as said Agreement or Agreements may be amended from time to time. Furthermore, the right to create, grant and/or use and enjoy additional non-exclusive easements, and to relocate existing platted easements, upon or across any portion of the Property except building envelopes, as may be reasonably required for the completion by Declarant of the described Improvements or the effective exercise by Declarant of any of the other rights described in this Declaration. Notwithstanding anything else herein, the construction of the Community Common Areas unless otherwise required by the City, is not required to commence until the total of the Community Common Area Initial Assessments are sufficient to completely pay for the construction of that part of the Community Common Area being built.

(b) Changes to Project. The right to amend any approved Concept Map and this Declaration, but is under no obligation to do so. Any reconfiguration of the Project may entail changes to the existing roadways and the Tuscan Hills layout. Declarant may expand project covered by these CC&R's to other property not on the Concept Map.

(c) Expansion in Phases. The right to expand or develop the project in one or more phases or stages, including property that may not be on the Concept Map. Also to expand the area and units on the Concept Map, which area and units will have full rights to all Community Common Areas.

17.1 Disclaimers. By accepting a deed to a Unit, each Owner acknowledges that Declarant and the Owners Association are only obligated to do those acts specifically enumerated herein, or in the Bylaws and Rules and Regulations and are not obligated to do any other acts with respect to the safety or protection of persons or property within the Project area. The Declarant's disclaimer includes but is not limited to the following:

(a) Safety. Any obligation regarding the security of any persons or property within the Project area.

(b) Fungus. Mold is a Fungus that occurs naturally in the environment, and is necessary for the natural decomposition of plant and other organic material. "Fungus" means any type or form of fungi including mold or mildew, and any mycotoxins, spores, scents or byproducts produced by fungi. Residential home construction is not designed to exclude Fungus such as mold. Neither Developer nor its contractor shall be responsible for any damages caused by mold, or by some other Fungus, including but not limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.


IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first above written.

DECLARANT:
HASKELL HOMES, INC.

By: Guy M. Haskell
Its President

STATE OF UTAH)
 :
COUNTY OF Washington : ss.

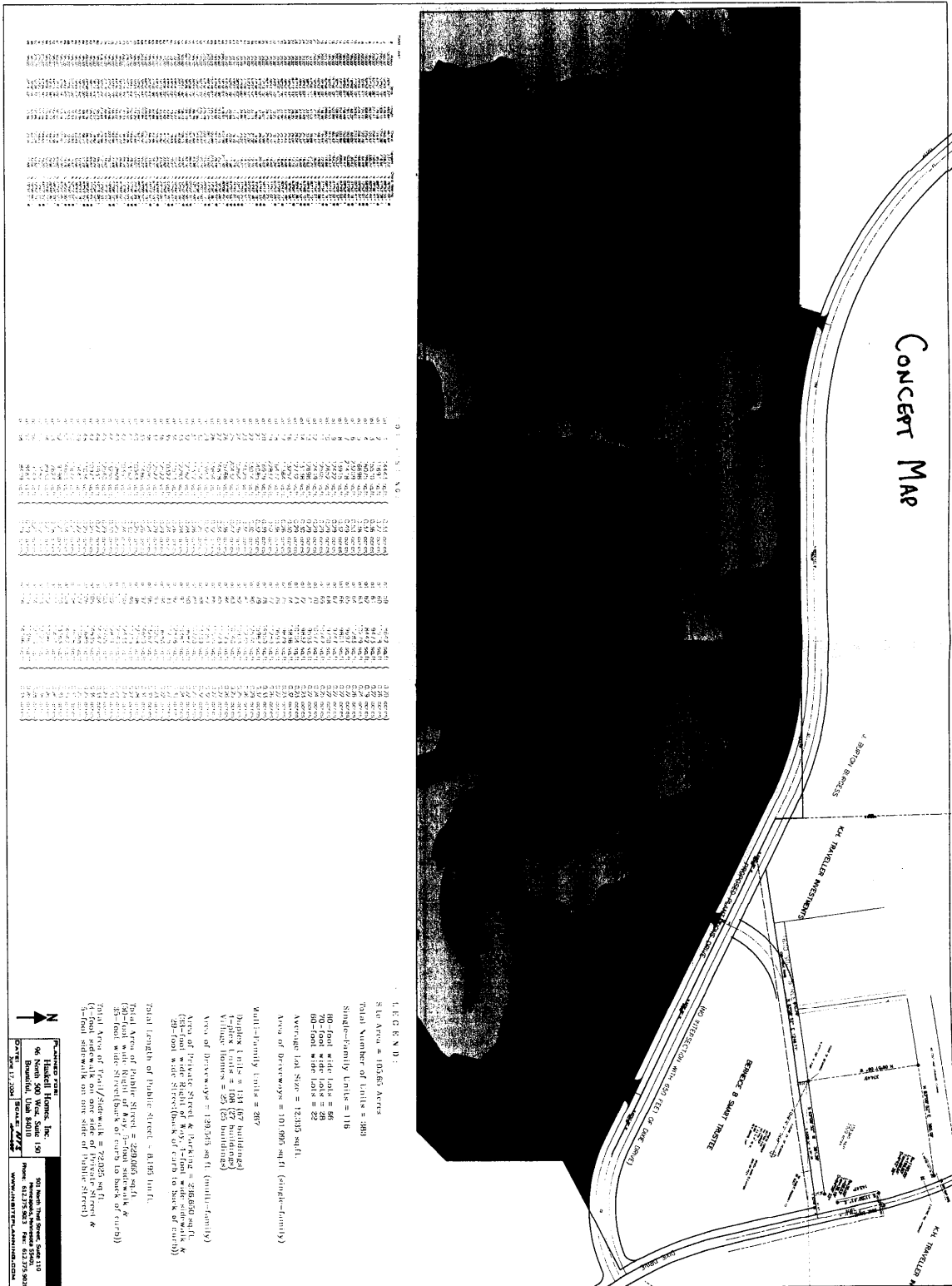
On this 14th day of December, 2005, personally appeared before me Guy M. Haskell, the President of Haskell Homes, Inc., whose identity is personally known to me, or proved to me on the basis of satisfactory evidence, and who by me duly sworn, did say that he is the President of Haskell Homes, Inc., and that said Declaration was signed by him in behalf of said limited liability company by authority of its Operating Agreement and Resolutions of Haskell Homes, Inc., and said Guy M. Haskell acknowledged to me that said company executed the same.

 NOTARY PUBLIC
ELWIN F. PRINCE
40 S. 100 E.
ST GEORGE, UT 84770
MY COMM EXP 08-02-07
STATE OF UTAH

Elwin F. Prince
NOTARY PUBLIC

EXHIBIT "A"
TUSCAN HILLS
A TOWNHOUSE
AND SINGLE FAMILY HOME PROJECT

CONCEPT MAP



CONCEPT MAP

LEGEND:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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LEGEND:

Site Area = 105,656 Acres

Total Number of Lots = 389

Single-Family Lots = 116

70-Foot wide Lots = 66

60-Foot wide Lots = 22

Average Lot Size = 12395 sqft.

Area of Driveways = 10,905 sqft. (single-family)

Multi-Family Lots = 207

Duplex Units = 131 (67 buildings)

4-plex Units = 106 (57 buildings)

Village Homes = 25 (13 buildings)

Area of Driveways = 130,345 sq ft. (multi-family)

Area of Private Street & Parking = 276,650 sq ft.

132-Foot wide Right of Way, 1-foot wide sidewalk & 20-foot wide street (back of curb to back of curb)

Total Length of Public Street = 61,095 lin ft.

Total Area of Public Street = 220,065 sq ft.

60-Foot wide Right of Way, 3-foot sidewalk & 35-foot wide street (back of curb to back of curb)

Total Area of Trail/Sidewalk = 72,225 sq ft.

1-foot sidewalk on one side of Public Street & 1-foot sidewalk on one side of Public Street

Haskell Home, Inc.

 96 North Third Street, Suite 110

 Merrill, Wis 53401

 Phone: (414) 224-7200

 Fax: (414) 224-7201

 E-mail: hskell@haskell.com

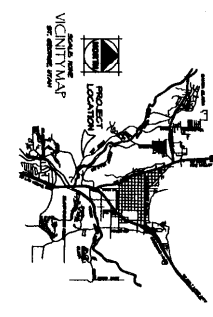
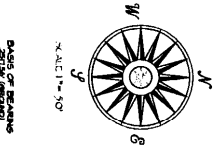
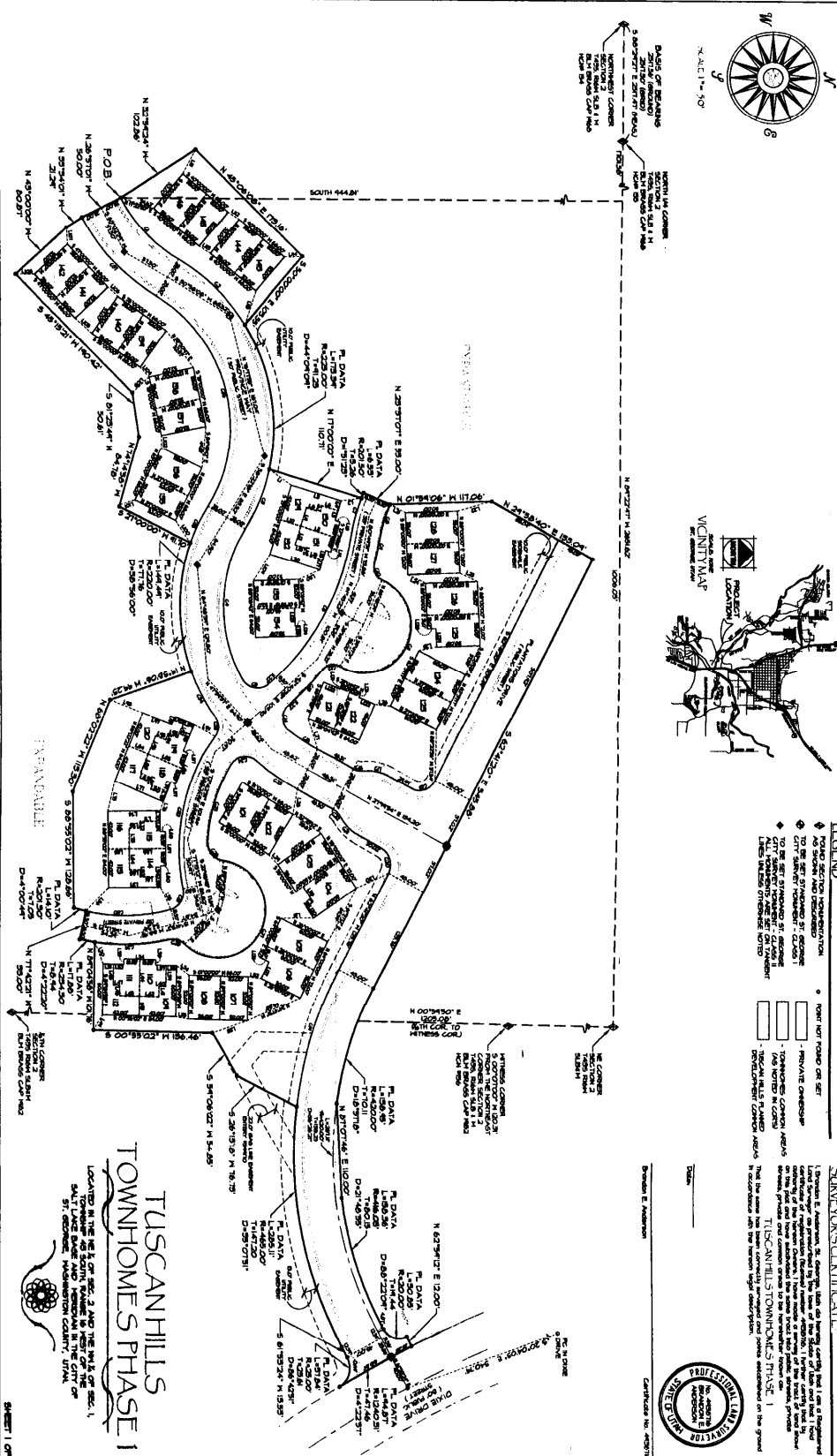
 Website: www.haskell.com

 Scale: 1" = 100'

 Date: 08/11/2000

EXHIBIT "B"

PHASE 1 and PHASE 2 COPY OF FINAL PLAT



LEGEND

- - FRONT YARD OR SET
- - PRIVATE DRIVEWAY
- - TOWNHOMES COMMON AREAS
- - TUSCAN HILLS PHASE I ENCLOSURE COMMON AREAS
- - FRONT YARD OR SET
- - PRIVATE DRIVEWAY
- - TOWNHOMES COMMON AREAS
- - TUSCAN HILLS PHASE I ENCLOSURE COMMON AREAS

SURVEYOR'S CERTIFICATE

I, Stephen B. Anderson, St. George, Utah, do hereby certify that I am a Registered Land Surveyor and professional member of the State of Utah and that I have personally supervised the survey of the above described lot and that the boundaries of the above described lot have been established by the survey shown on the above described plat. I have made a copy of this plat and have placed the same in the public office of the county clerk of St. George, Utah, for the purpose of recording the same. The boundaries and common areas to be surveyed are shown on the above described plat. I have made a copy of this plat and have placed the same in the public office of the county clerk of St. George, Utah, for the purpose of recording the same.

TUSCAN HILLS TOWNHOMES PHASE I

Surveyed and Plat Made: 9/14/2005

By: Stephen B. Anderson



TUSCAN HILLS TOWNHOMES PHASE I

ROSENBERG ASSOCIATES

CITY ENGINEER'S APPROVAL

APPROVAL of the PLANNING COMMISSION

APPROVAL of the PLANNING and ZONING ADMINISTRATOR

APPROVAL and ACCEPTANCE by the CITY OF ST. GEORGE, UTAH

APPROVAL as to FORM

TOWN	COUNTY	STATE	DISTRICT	SECTION	RANGE	TOWNSHIP
ST. GEORGE	WAKEFIELD	UTAH	11	10	11S	32N

DATE	TIME	PAGE

EXHIBIT "C"

NON EXHAUSTIVE ACC GUIDELINES FOR PHASE 1

NON EXHAUSTIVE ACC GUIDELINES FOR PHASE 2