



\*W2253884\*

E# 2253884 PG 1 OF 49  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
04-APR-07 122 PM FEE \$131.00 DEP JC  
REC FOR: KIRK A. CULLIMORE & ASSOCIATES  
ELECTRONICALLY RECORDED

WHEN RECORDED RETURN TO:

THE LAW OFFICE OF KIRK A. CULLIMORE  
ATTN: SAM BELL  
644 EAST UNION SQUARE  
SANDY, UT 84070  
(801) 571-6611

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
COLONIAL GARDENS TOWNHOUSES**

**THIS DECLARATION** is made and executed this 4 day of April, 2007, by Stone Ridge Financial, LLC, a Utah limited liability company, with its principal place of business located in Lehi City, State of Utah (hereinafter referred to as "**Declarant**").

**RECITALS**

A. Declarant is the record owner of that certain tract of property more particularly described in **Exhibit "A"** of this Declaration.

B. The Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Project subject to the following covenants, conditions, restrictions, easements and limitations herein set forth which are hereby declared to be for the benefit of the whole tract and all of the property described herein and the owners thereof, their successors and assigns.

C. These covenants, conditions, restrictions, easements and limitations shall run with the said real property and shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof and shall inure to the benefit of each owner thereof and are imposed upon said real property and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements.

D. It is intended and required that the Association shall be an incorporated homeowners association pursuant to Utah's Nonprofit Corporations Act.

NOW, THEREFORE, for the benefit of the Project and the Lot Owners thereof, the Declarant hereby executes this Declaration of Covenants, Conditions, and Restrictions, for and on behalf of all of the Lot Owners.

## ARTICLE I

*DEFINITIONS*

When used in this Declaration (including in that portion hereof headed "Recitals" and in the Bylaws attached hereto as **Exhibit "B"**) the following terms shall have the meaning indicated.

**1.1 Articles of Incorporation or Articles** shall mean and refer to the Articles of Incorporation for Colonial Gardens Homeowners Association, Inc., a Utah nonprofit corporation, on file with the Utah State Department of Commerce, as amended.

**1.2 Association** shall mean and refer to the Colonial Gardens Homeowners Association, Inc., a Utah non-profit corporation. Every Lot Owner shall automatically be a member of the Association. Membership in the Association shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

**1.3 Board of Directors** shall mean and refer to the body of Owners that shall govern the property, business and affairs of the Association.

**1.4 Common Areas and Facilities** shall mean, refer to, and include:

(a) The real property and interests in real property, which this Declaration submits to the terms of the Project Documents.

(b) All Common Areas and Facilities designated as such in the Survey Map.

(c) All installations for and all equipment connected with the furnishing of Project utility services, such as electricity, gas, water, telecommunication lines, coaxial cables, and fiber optic lines, sewer, and other related facilities and equipment designed for use by more than one Lot.

(d) In general all apparatus, installations, and facilities included within the Project and existing for common use.

(e) The Project's outdoor lighting, fences, landscape, sidewalks, parking spaces, and roads.

(f) All portions of the Project not specifically included within the individual Lots.

(g) All other parts of the project normally in common use or necessary or convenient to its use, existence, maintenance, safety, or management.

(h) All common areas as defined in the Project Documents, whether or not enumerated herein.

**1.5 Common Expenses** shall mean and refer to all sums which are expended on behalf of all the Lot Owners and all sums which are required by the Board of Directors to perform or exercise its functions, duties, or rights under the Project Documents.

**1.6 Common Profits** shall mean and refer to the balance of income, rents, profits and revenues from the Common Areas remaining after deduction of the Common Expenses.

**1.7 Declarant** shall mean and refer to Stone Ridge Financial, LLC, a Utah limited liability company, and/or any successors to said corporation which, either by the operation of law, or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Project (or a portion thereof) as did its predecessor.

**1.8 Declaration** shall mean and refer to this instrument and as it may be amended from time to time.

**1.9 Family** shall mean and refer to Family as defined by applicable local zoning ordinance.

**1.10 Improvements** means every structure or improvement of any kind, including but not limited to landscaping required under the Project Documents and any Living Unit, deck, porch, awning, fence, garage, carport, driveway, storage shelter or other product of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

**1.11 Limited Common Areas and Facilities** shall mean and refer to those Common Areas and Facilities designated herein or on the appropriate Record of Survey Map as reserved for the use of a certain Owners to the exclusion of the other Owners, Limited Common Areas consist of, but are not limited to, the back yard areas, carports, and storage units indicated on the appropriate Record of Survey Map as Limited Common Areas.

**1.12 Living Unit or Unit** means a Lot or two or more contiguous Lots combined into one parcel with a structure situated upon it

that is designated and intended for use and occupancy as a residency by a single family.

**1.13 Lot** shall mean and refer to those portions of the Property that are subdivided parcels of land shown and defined as lots or plots of ground (exclusive of the Common Area and Limited Common Area) and designated by letters A through Z on the Plat. The term Lot and Unit may be used interchangeably in deeds and or legal descriptions but shall mean Lot.

**1.14 Mortgage** shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

**1.15 Mortgagee** shall mean a beneficiary of a deed of trust as well as a named Mortgagee.

**1.16 Owner** shall mean and refer to the owner of the fee in a Lot. In the event a Lot is the subject of an executory contract of sale, the contract purchaser shall, unless the seller and the purchaser have otherwise agreed and have informed the Board in writing of such agreement, be considered the Owner for purposes of voting and membership.

**1.17 Person** shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

**1.18 Project Documents** shall mean and refer to the Declaration, Bylaws, Articles of Incorporation, the Map, Rules and Regulations, any agreements, instruments, and determinations adopted pursuant to the Project Documents.

**1.19 Property or Project** shall mean and refer to the land, described in Exhibit "A," the buildings, all improvements and the structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property, belonging to the Association, intended for use in connection therewith.

**1.20 Record of Survey Map or Maps or Plat** shall mean and refer to the Record of Survey Maps of the Project on file with the

Weber County Recorder's Office.

**1.21 Resident** shall mean and refer to any person living or staying at the Project. This includes but is not limited to all lessees, tenants, and the family members of Owners, tenants or lessees.

NOTES:

ARTICLE II

*SUBMISSION*

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**2.1 Property Submitted**

is more particularly described in Exhibit "A" attached hereto.

The Property is hereby submitted to the provisions of this Declaration. The Property

NOTES:

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

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#### **3.1 Membership**

Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

#### **3.2 Voting Rights**

The Association shall have the following described two classes of voting membership:

**Class A.** Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to one (1) vote for each Lot owned by the Member. In no event, however, shall more than one Class A vote exist with respect to any Lot.

**Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned by it. The Class B Membership shall automatically cease and be terminated when Declarant, its successors or assigns, sell all Lots owned by it or occupy its Lots in a manner inconsistent with the development, build-out, sale, marketing, or other regular

development activities of Declarant.

#### **3.3 Multiple Ownership Interests**

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

#### **3.4 Record of Ownership**

Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot. Each Owner shall file a copy of such conveyance document (or contract) with the Secretary of the Association.

#### NOTES:

## ARTICLE IV

### ENFORCEMENT OF COVENANTS, CONDITIONS, RESTRICTIONS

#### **4.1 Compliance**

Each Resident of a Lot shall comply with the provisions of the Project Documents and any applicable statute. Failure to comply therewith shall be grounds for sanctions (i.e., fines) and/or an action or suit maintainable by the Association or an aggrieved Owner.

#### **4.2 Remedies**

Violation of any provisions of the Project Documents, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors acting on behalf of the Association, in addition to any other rights set forth in the Project Documents, or under law, to do any or all of the following after giving notice and an opportunity to be heard:

(a) After fifteen (15) days written notice, to enter any Lot which or in which such violation exists and to abate and remove, at the expense of the Owner, any structure, thing, or condition that may exist contrary to the Project Documents. The Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be demolished;

(b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(c) To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board of Directors a copy of which has been delivered to each Owner, mailed to the

mailing address of the Lot or mailed to the mailing address designated by the Owner in writing to the Association;

(d) The right of the Association to suspend the voting rights of the Owners, after notice and a hearing, for any infraction of any of the Project Documents until such time as the infraction is cured; or

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce the Project Documents.

#### **4.3 Action by Owners**

Subject to any limitation imposed under the Project Documents or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

#### **4.4 Injunctive Relief**

Nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

#### **4.6 Hearings**

The Board of Directors shall, by resolution, promulgate procedures for hearings. When a hearing is requested or required, the hearing shall be conducted in accordance with the Board of Director's resolution on hearings.

#### NOTES:

ARTICLE V

*IMPROVEMENTS*

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**5.1 Description of Improvements**

The improvements included in the Project are now located on the Property described in said Exhibit "A," and all such improvements are described on the appropriate Record of Survey Map. The significant improvements contained in the Project include Living Units, roadways, carports, storage units and parking lots. The Project also contains other improvements of a less significant nature such as outdoor lighting and landscaping.

**5.2 Description and Legal Status of Lots**

The Map shows the Lots, Limited Common Areas, and the Common Areas. All Lots shall be capable of being independently owned, encumbered, and conveyed.

Each conveyance or installment contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the letter shown on the Map with appropriate reference to the Map and to this Declaration, as each shall appear on the records of the County Recorder of Weber County, State of Utah.

NOTES:



## ARTICLE VI

*COMMON AREAS; MAINTENANCE***6.1 Common Areas**

The Association shall take title to the Common Area that is part of the Property free and clear of all encumbrances, except non-monetary title exceptions and this Declaration not later than the date the first Lot is conveyed to an Owner (other than Declarant). The Covenants are hereby imposed upon the Common Area for the benefit of Declarant, the Association, and the Owners, and their respective personal representatives, successors and assigns, to the end and intent that the Association shall have and hold the said Common Area subject to the reservations set forth in Article V hereof, and to the Project Documents.

**6.2 Owner's Right of Enjoyment**

Every member of the Association shall have a non-exclusive right and easement for the use, benefit and enjoyment, in common with others, in and to the Common Area and such non-exclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein. Except as otherwise permitted by the provisions of this Declaration, the Common Area shall be retained in its natural state, and no Structure or improvement of any kind shall be erected, placed or maintained thereon. Structures or improvements designed exclusively for community use, shelters, benches, chairs or other seating facilities, fences and walls, walkways, drainage and utility structures, grading and plantings, may be erected, placed and maintained on Common Area by the Association. No portion of the Common Area may be used exclusively by any Owner

for private uses.

**6.3 Maintenance Obligations of the Association**

The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Area, carports, and the exteriors of the storage units.

The Association shall also provide exterior maintenance upon each Lot as follows: paint, repair, replacement and care of roof, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.

In the event that the need for maintenance or repair of a Lot, Common Area, or Limited Common Area or the improvements thereon is caused by the willful or negligent acts of an Owner or through the willful or negligent acts of the family, guests, invitees or Lessees of the Owner shall be liable for the cost of such maintenance and repair, and the cost of such maintenance and repair shall be an Individual Assessment against the Lot.

**6.4 Maintenance Obligations of the Owners**

Owners are responsible for the cleaning and maintenance of air conditioning units, all glass surfaces, windows and window screens. Any repair and maintenance work must match the original or be approved in advance by the Board. Owners are also responsible for all interior components of their Living Unit, storage units, and Limited Common Areas.

**6.5 Party Walls**

Each wall which is built as a part of the original construction of the Lots upon the Properties and placed on the dividing line between Lots shall constitute a party wall, and, to the extent consistent with this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who use of the wall in proportion to such use. However, if one Owner is negligent or willfully damages a party wall, that Owner shall bear the whole cost of repairing the wall. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall

shall restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use with prejudice, however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

**6.6 Limited Common Areas**

Limited Common Areas described on the Map shall be appurtenant to the Lots to which they are assigned on the Map. Limited Common Area shall not be partitioned or separated from the Lot to which it is assigned on the Map.

NOTES:

## ARTICLE VII

### *GENERAL AND SPECIFIC EASEMENTS*

#### **7.1 Easement for Encroachment**

If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot or Lots, an easement for such encroachment and for the maintenance for the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Lot or Lots, an easement for such encroachment and for the maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or to the Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building(s) on the tract, by error in the appropriate Record of Survey 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.

#### **7.2 Access for Repair of Common Areas**

Some of the Common Areas are or may be located within the Lots or may be conveniently accessible only through the Lots.

The Owners of the other Lots shall have the irrevocable right, to be exercised by the Board, as its agent, to have access to each Lot and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Lot. The Board shall also have such rights independent of the agency relationship.

#### **7.3 Emergency Repairs**

Damage to any part of a Lot or Lots resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs to another Lot at the insistence of the Board shall be the responsibility of the Association. However, if such damage is the result of negligence of an Owner, then such Owner shall be financially responsible for all such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. The Board shall collect amounts owing by Owners pursuant hereto by assessment.

#### **7.6 Easement to Board of Directors and Manager**

The Board and Management Company shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

#### **7.7 Easement for Utility Services**

There is hereby created a blanket easement upon, across, over and under the property described in "Exhibit A" for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones, electricity, and other utility services.

#### NOTE:

## ARTICLE VIII

### *USE RESTRICTIONS*

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#### **8.1 Use of Lots**

Each of the Lots in the Project is limited to single Family, residential use only. Each Lot and Owner is subject to the uses and restrictions imposed by such restrictions (including any parking restrictions).

#### **8.2 No Obstruction of Common Areas**

There shall be no obstructions of the Common Areas by the Owners, their tenants, guests or invitees without the prior written consent of the Association. The Association may by Rules and Regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Lots, Limited Common Areas, or the Common Areas.

Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in or removed from the Common Areas except upon the prior written consent of the Association.

#### **8.3 Cancellation of Insurance**

Nothing shall be done or kept in any Lot or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof without the prior written consent of the Association.

Nothing shall be done or kept in any Lot or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees.

#### **8.4 Rules and Regulations**

No Owner shall violate the Rules and Regulations for the use of the Lots and of the Common Areas as adopted from time to time by the Board.

#### **8.5 Structural Alterations**

No Owner shall make any structural alterations to a Lot or Limited Common Area without the prior written consent of the Board.

#### **8.6 Window Coverings**

Under no circumstances shall any cardboard or tinfoil be used as window coverings in the Project.

#### **8.7 Signs**

No signs whatsoever shall be erected or maintained in the Common Areas without the prior written consent of the Board.

**8.8 Pets**

Dogs, cats or other household pets shall be allowed on Lots within the Project if: (1) Ownership of the pet does not violate any local, state or federal laws; (2) The Resident accepts full liability for his or her pet; (3) Any pet allowed outside of the owner's Lot is accompanied by the owner and is on a leash and under control; (4) The pet owner promptly cleans up all of his or her pet's droppings; (5) The pet is licensed and vaccinated in accordance with Weber County ordinances; (6) Upon request, the Board is given a copy of the pet's license and proof of vaccination, along with a description sufficient to describe the pet; (7) The pet owner complies with the administrative rules and regulations as they may be adopted or modified by the Board from time to time; and (8) No animals or birds of any kind shall be raised, bred, or kept in any of the Common Areas.

Anything to the contrary notwithstanding, no pet shall be allowed to create or maintain a nuisance. At the discretion of the Board, after notice and a hearing, any pet that is considered to be a nuisance shall not be allowed to remain within the confines of the Project. For the purposes of this paragraph a nuisance is defined as any behavior which annoys or disturbs other Residents, including but not limited to any abnormal, unreasonable or excessive barking, whining, or scratching; any behavior which creates an unacceptable odor, an unhygienic environment or a dangerous condition; or any behavior which establishes a propensity for harm.

If a pet owner violates any of these covenants, conditions or restrictions, including any administrative pet rules and regulations, the Board shall have the express authority to issue

citations or levy assessments, and collect these by judgment, lien or foreclosure. In extreme cases, the Board may require that the Owner remove their pet from the premises.

**8.9 Storage and Parking of Vehicles**

No motor vehicle or trailer, including but not limited to any automobile, commercial vehicle, truck tractor, mobile home, or trailer (either with or without wheels), camper trailers, boat or other water craft, boat trailer, or any other transportation device of any kind may be parked or stationed in front of any garage, walkway, driveway, Lot, Limited Common Area or Common Area.

Visitors may only park their motor vehicles temporarily in accordance with the Rules and Regulations promulgated by the Board.

No Residents or visitors shall repair or restore any motor vehicle of any kind upon any Lot, Limited Common Area, or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

Motor Vehicles parked in unauthorized areas, or in violation of the parking rules and regulations established by the Board, may, at owner's expense, be towed away. The Board shall be required to follow all municipal ordinances and codes regarding towing enforcement prior to towing a vehicle.

All parking spaces shall be used for the purpose of parking motor vehicles and shall not be used as storage facilities.

**8.10 Leases**

Any lease agreement shall provide that the terms of the lease shall be subject in all

respects to the provisions of the Project Documents and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing and shall be filed with the Association.

Leases shall also prohibit smoking and shall require that tenants who own pets will register the pets with the Association.

No more than forty percent (40%) of Living Units may be used for lease or rental purposes at any given time. "Leasing or renting" of a Living Unit means the granting of a right to use or occupy a Unit for a specific term or an indefinite term (with rent stated on a periodic basis), in exchange for the payment of rent (money, property or other goods or services of value); but shall not mean and include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

The lease term shall not start until the Board has an opportunity to review the proposed lease agreement, and determines that the lease contains all required terms and does not exceed the forty percent (40%) lease limit. The Board shall approve or deny an owners lease or rental agreement within ten (10) days of submission for approval.

The Board shall track the number of rentals in the Project, and shall deny an Owner if their lease exceeds forty percent (40%). The Board shall also deny any lease or rental agreement not containing all required terms.

If an Owner fails to submit the lease agreement with the required terms, and rents or leases any Living Unit, and/or rents or leases any Unit after the Board has denied the Owner, the Board may assess fines against the

Owner and the Lot in an amount to be determined by the Board pursuant to a schedule of fines. In addition, regardless of whether any fines have been imposed, the Board may proceed with any other available legal or equitable remedies, including but not limited to, an action to terminate the rental or lease agreement and removal of any tenant or lessee.

#### **8.11 Aerials, Antennas and Satellite Dishes**

It is the intent that this policy not be inconsistent, incongruent or in conflict with applicable local, state and federal legislation. Aerials, antennas and satellite dishes shall be prohibited within the Project, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement (hereafter referred to as "Permitted Devices") shall be subject to the following:

(a) located in the attic or other interior spaces of the residential unit, so as not to be visible from outside the unit;

(b) attached to or mounted behind the area appurtenant to the residential unit on the rear wall of the building containing the residential unit so as to extend no higher than the plane commencing the next story of the building or the eaves of the building at a point directly above the position where attached or mounted to the wall.

Notwithstanding the foregoing, should an Owner determine that a Permitted Device cannot be located in compliance with the

above guidelines without precluding reception of an acceptable quality signal, then the Owner may install the device in the least conspicuous alternative location on the Lot where an acceptable quality signal can be obtained.

The Board may adopt rules establishing a preferred hierarchy of alternative locations and require screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device. Anything to the contrary notwithstanding, no Permitted Device may be located in the common area without the express prior written consent of the Board. Permitted Devices may only be installed in, on or within property which a party owns or is subject to his exclusive use.

#### **8.12 Timeshares**

Timeshares and time-sharing of Living Units within the Project is prohibited, and under no circumstances shall any Living Unit be owned or used for time sharing, including but not limited to a "time period unit" as that term is defined in Utah Code Ann. § 57-8-3(26), as amended. The Board shall have the power to adopt, enforce and revise reasonable rules and regulations to prevent such time-sharing of Units. The Owners desire to preserve the original concept of the Project as an outstanding recreational living accommodation, to facilitate the efficient and inexpensive maintenance and repair of all parts of the Project, and to maintain property values to the benefit of all Owners or Units in the Project.

#### **8.13 Smoking**

a. Smoking within a Unit or on the Limited Common Areas or Common Areas of the Project is a noxious and offensive activity creating a nuisance. Accordingly, smoking in a Unit or on the Limited Common Areas or Common Areas of the Project is strictly prohibited.

b. Owners shall be fined for smoking violations according to the fine schedule adopted by the Board related to smoking violations.

c. All Owners who rent or lease their Unit shall prohibit smoking in their rental or lease agreements and shall inform their tenants of the Association's no smoking rule.

#### **8.14 Temporary Structures, etc.**

No structure of a temporary character, or trailer, camper, tent, shack, garage, or other outbuilding shall be used on any Lot, Limited Common Area, or Common Area at any time as a residence either temporarily or permanently, unless first expressly approved in writing by the Board.

#### **8.15 Clothes Drying Facilities**

Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Property unless they are erected, placed and maintained within a fenced yard so as to not be visible from any neighboring Lot or Common Area.

#### **NOTES:**

ARTICLE IX

*BOARD OF DIRECTORS; POWERS; COMPOSITION*

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**9.1 Status and General Authority of Board of Directors**

Notwithstanding anything herein contained to the contrary, the Project shall be managed, operated, and maintained by the Board of Directors exclusively as agent of, and in the name of, the Association and any act performed by the Board of Directors pursuant to the Project Documents, as the same may be amended from time to time, shall be deemed to be performed by the Association. The Board of Directors shall have, and is hereby granted, the following authority and powers:

(1) The authority, without the vote or consent of the Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar easements over, under, across and through the Common Areas.

(2) The authority to execute and record, on behalf of all the Owners, any amendment to the Declaration or Record of Survey Map which has been approved by the vote or consent necessary to authorize such amendment.

(3) The power to sue and be sued.

(4) The authority to enter into contracts, which in any way concern the Project, so long as any vote or consent of the Owners necessitated by the subject matter of the agreement, has been obtained.

(5) The power and authority to convey or transfer any interest in Common

Area as authorized by a sixty-seven percent (67%) of the Owners. In the Board's sole discretion, to convey or transfer any interest in a Lot owned by the Association.

(6) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances.

(7) The authority to license persons not otherwise entitled to use any of the recreational areas and facilities to use the same from time to time as the Board deems appropriate upon payment of fees prescribed by it to help defray the cost of maintenance thereof.

(8) The power and authority to borrow money, provided that no indebtedness for borrowed funds shall exceed at any given time the sum of \$5,000 without the prior approval of the majority of the Owners.

(9) The authority to promulgate such reasonable Rules and Regulations, and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Owners and the authority to levy fines for infractions thereof, including, but not limited to, promulgating rules.

(10) The powers and authority to perform any other acts, and to enter into any other transactions which may be reasonably



necessary, for the Board of Directors to perform its functions as agent of the Association.

Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

(11) The Board may carry out through a project manager any of its functions which are properly the subject of delegation. Any manager so engaged shall be an independent contractor and not an agent or employee of the Board or Association, shall be responsible for managing the Project for the benefit of the

Board and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself. Any agreement for professional management of the Project shall call for a term not exceeding three (3) years and shall provide that for cause such management agreement may be terminated by the Board or by the Association upon not in excess of ninety (90) days written notice.

**9.2 *Composition of Board and Selection Thereof***

The Board of Directors shall be composed of three (3) members. The selection thereof shall be established in the Bylaws of the Association.

NOTES:

## ARTICLE X

ASSESSMENTS**10.1 Covenant for Assessment**

(a) Each Owner, by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments:

(1) Annual assessment (the "Annual Assessment") as provided in Section 10.2 below.

(2) Special assessments ("Special Assessments") as provided in Section 10.5 below.

(3) Emergency assessments ("Emergency Assessments") as provided in 10.6 below.

(4) Individual assessments ("Individual Assessments") as provided in Section 10.7 below.

(b) Assessments shall be established and collected as provided in this article.

(c) No Owner may exempt itself from liability for Assessments by non-use of the Common Areas or abandonment of any Lot owned by such Owner.

**10.2 Annual Budget and Assessment**

(a) Annual Budget. The Board of Directors shall prepare or cause the preparation of an annual budget for the Association, which shall provide, without limitation, for the maintenance of the

Common Areas and all other areas of Association responsibility and for the administration, management and operation of the Association. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect.

**(b) Determination of Annual Assessment**

(1) The Board shall fix the amount of the Annual Assessment against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessment shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any assessment period.

(2) The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

**10.3 Apportionment of Assessments**

Assessments shall be apportioned as follows:

**(a) Annual, Special and Emergency**

Assessments. Annual, Special and Emergency Assessments shall be equally apportioned among all the Lots.

(b) Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lots benefited or to which the expenses are attributable.

(c) Payment of Assessments. In the Board's discretion, installments of Annual Assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on a monthly basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

#### ***10.4 Personal Obligation and Costs of Collection***

(a) Assessments imposed under this Declaration, together with interest, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due.

(b) The personal obligation for any delinquent Assessment, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

#### ***10.5 Special Assessments.***

In addition to the Annual Assessments authorized in this Article, the Association may levy in any assessment year, a special

assessment ("Special Assessment"), applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area; provided that such assessment shall first be approved by fifty-one percent (51%) of the Owners, voting in accordance with the Bylaws.

#### ***10.6 Emergency Assessment***

(a) If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including delinquent Assessments, the Board shall, as soon as practicable, determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and levies the additional assessment ("Emergency Assessment"). The resolution shall specify the reason for the Emergency Assessment.

(b) Any Emergency Assessments in a fiscal year, which in the aggregate exceed ten percent (10%) of the budgeted expenses of the Association shall be considered a Special Assessment and shall require approval as such.

#### ***10.7 Individual Assessments***

(a) Any expenses benefiting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefited ("Individual Assessment"). Individual Assessments shall include, but are not limited to:

(1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot, Limited Common Area, or its Owner into

compliance with the provisions of this Declaration or rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation of the Project Documents.

(2) Any reasonable services provided to Lot by the Association due to an Owner's failure to maintain the same in order to protect the health, safety and welfare of the Association in general.

#### **10.8 Nonpayment of Assessments**

Any assessment or portion thereof not paid within thirty (30) days after the due date:

(a) Shall be delinquent and shall bear interest from the due date at the rate, established by resolution of the Board of Directors, not to exceed the maximum rate permitted by law, and

(b) Shall be subject to a monthly late charge in such an amount as determined to be reasonable by the Board of Directors in their discretion and evidenced by Board resolution.

#### **10.9 Lien for Assessments**

All Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article and shall be construed as a real covenant running with the land.

#### **10.10 Subordination of Lien to Mortgages**

(a) The priority of a lien for Assessments shall be determined by Utah law governing priority of security interests in real property.

(b) The sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien for assessments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, nor from the lien of any future assessment.

#### **10.11 Enforcement of Lien**

The Association may establish and enforce the lien for any Assessment, including any Assessment created pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. The lien may be established and enforced for unpaid assessments, damages, interest, costs of collection, late charges, and attorneys' fees. The lien may be foreclosed in the same manner as either deeds of trust, mortgages, or in any other manner permitted by Utah law. The collection remedies stated herein are cumulative and the use of one does not preclude the use of other remedies.

#### **10.12 Suspension of Voting Rights**

The Board of Directors shall have the right to suspend any Owner's right to vote during any period of time that the Owner carries a past due assessment balance.

#### **10.13 Absentee Owner Failure to Pay Assessments**

In the event that an absentee Owner fails to pay any assessment obligation hereunder, and a tenant occupies the Lot, the Association may demand that the tenants pay to the Association any rent owing to

said Owner. Said amount received shall be applied to the Owner's account and payments hereunder shall not constitute a breach of the lease agreement between the Owner and Tenant. Any rent payments received by the Association shall not constitute a breach of the lease or rent agreement.

**10.14 Termination of Utilities**

In the event that an Owner fails to pay their Assessments, the Association may terminate any utilities paid for out of assessments until the correction of the violation has occurred. The procedure and process to terminate

utilities found in the Utah Code shall be followed when terminating utilities.

**10.15 Reserve Account**

The Association shall establish a reasonable reserve account for the funding of long term maintenance and/or replacement items. The Board shall use reasonable efforts to fund said reserve account but shall not be held personally liable for a failure to fully fund said account as long as gross negligence or intentional misconduct is not proven in a court of law.

NOTES:

## ARTICLE XI

*INSURANCE**11.1 Insurance*

Lot Owners are required to carry and maintain adequate property and liability insurance on their Lots. An Owners' policy shall serve as primary insurance in the event any damage is caused to another Lot, Limited Common Area, or Common Area so long as fault is attributable to the said Owner. The Board may request that Owners provide proof of adequate insurance.

The Association shall secure and at all times maintain the following insurance coverage:

(a) A master or blanket policy of property insurance, with extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

Each such policy shall contain the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear. The insured shall be the Association as a trustee for the Owners, or their authorized representative. Such insurance must provide protection against at least the following loss by fire and other hazards covered by the standard extended coverage.

(b) A comprehensive policy of public liability insurance covering all of the

Common Areas insuring the Association, the Board, the Manager, and the Owners against any liability incident to the ownership, use, or operation of the Common Areas and public ways of the Project or of any Lot which may arise among themselves, to the public, or to any invitees, or tenants of the Project, or of the Owners. Limits of liability under such insurance shall be not less than One Million Dollars (\$1,000,000.00) covering all claims for personal property injury and for property damage arising out of a single occurrence, including protection against water damage liability, liability for nonowned and hired automobile and liability for property of others. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for similar projects in location, construction and use.

(c) The Association shall maintain fidelity coverage to protect against dishonest acts on the part of Directors, manager (including, but not limited to, employees of professional managers) employees, or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the obligee and shall be written in an amount sufficient to provide protection which in no event shall be less than one-half of the insured's estimated annual operating expenses and reserves unless a greater amount is required

by majority of the Mortgagees or their designees.

In connection with such coverage any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. All fidelity bond coverage shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days prior written notice to the service on behalf of Mortgagees.

The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance and bond coverage described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with all projects similar to the Project in construction, nature and use.

(2) Each hazard insurance policy shall be written by a company holding a financial rating of Class VI or better as designated in Best's Key Rating Guide. Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where (i) under the terms of the carrier's charter, Bylaws or policy, contributions or assessments may be made against the borrower or the Mortgagee, or its 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 the Mortgagee or the borrower from

collecting insurance proceeds.

(3) The Board shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(5) Each policy of insurance obtained by the Association shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located; a waiver (if available) of the insurer's subrogation rights with respect to the Board, the manager, the Owners, their respective servants, agents, and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any member, officer or employee of the Association or of the manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners; and that a mortgagee clause endorsement which must provide that the insurance carrier shall notify in writing any and all insureds, including the servicers on behalf of Mortgagees or designees thereof at least thirty (30) days in advance of the effective date of any substantial modification or cancellation of the coverage.

(6) Each Owner shall obtain additional insurance at his own expense, as long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Association. Each Owner shall supply the Association with a copy of

his policy within 30 days after he acquires such insurance.

(7) Insurance coverage required by this Article must not be prejudiced by (i) any act or neglect of the Owners when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Project over which the Association has no control.

(8) All policies of property insurance must provide that notwithstanding any provision affording the insurer 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 Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the insurance may be a party or any requirement of law.

**11.2 Damage to Project**

In the event of damage of or destruction to all of the improvements in the Project, the following procedures shall apply:

(a) If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damage or destroyed improvement, such repair or reconstruction shall be carried out.

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if the proceeds of the

insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all the Owners shall be assessed for any deficiency on an equal basis.

(c) If 75% or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish restoration, and if the Owners within 100 days after the destruction or damage by a vote of at least 75% elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph (b) above.

(d) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Association are insufficient to accomplish restoration, and if the Owners do not, within 100 days after the destruction or damage and by a vote of at least 75%, elect to repair or reconstruct the affected improvements, the Board of Directors shall promptly record with the Weber County Recorder a notice setting forth such facts.

Any reconstruction or repair which is required to be carried out by this Article regarding the extent of damage to or destruction of Project improvements shall be made by three appraisers selected by the Board of Directors. The decision of any two such appraisers shall be conclusive.

NOTES:



## ARTICLE XII

*MORTGAGEE PROTECTION***12.1. Mortgagee Protection**

Notwithstanding anything to the contrary contained in the Declaration:

(a) Any mortgage holder which comes into possession of the Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage or deed (or assignment in lieu of foreclosure) shall be exempt from any "right of first refusal," or other provisions which may exist relating to sale or lease of the Lots in the Project, and no right of first refusal shall impair the rights of any first mortgage to: (i) foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, or (ii) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or (iii) interfere with a subsequent sale or lease of the Lot so acquired by the Mortgagee.

(b) In the event of damage to or destruction of any Lot, which loss exceeds \$1,000.00, or any part of the Common Areas, which loss exceeds \$10,000.00, the institutional holder of any first mortgage on a Lot shall be entitled to timely written notice to any such damage or destruction. No Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Owner of any insurance proceeds regardless of the amount of loss. Upon request of any first mortgagee, the Association must provide a letter to said first Mortgagee wherein the Association agrees to notify the first Mortgagee or any organization it designates at the address indicated by the Mortgagee whenever (i) damage to a Lot covered by the first Mortgagee's mortgage exceeds

\$1,000.00, or (ii) damage to the Common Areas and related facilities exceeds \$10,000.00.

(c) If any Lot or portion thereof or the Limited Common Areas, 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, the institutional holder of any first mortgage of a Lot shall be entitled to timely written notice of any such proceeding or proposed acquisition. No Owner or other party shall have priority over such institutional holder regardless of the amount of the condemnation award with respect to the distribution to such Owner of the proceeds of any award or settlement.

(d) Each holder of a first mortgage lien on a Lot who obtains title to a Lot by virtue of remedies provided in the Mortgage, including but not limited to, foreclosure of the mortgage, or by deed of assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of unpaid charges and shall not be liable for any unpaid claims or assessments and charges against the Lot which accrue prior to the acquisition of title of such Lot by Mortgagee, except for claims for a pro rata share of such assessments or charges to all Lots including the mortgaged Lot.

(e) Any lien which the Board may have on any Lot in the Project for the payment of Common Expenses assessments attributable to such Lot will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the

date any such Common Expense Assessments become due.

(f) Unless at least 75% of the institutional holders of first Mortgages (based on one vote for each Mortgage owned) of Lots have given their consent neither the Board, Owners nor the Association shall:

(1) By act or omission, seek to abandon or terminate the Project, except in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

(2) By act or omission, seek to amend, partition, subdivide, encumber, sell, abandon or transfer the Common Areas. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this subparagraph).

(3) Use hazard insurance proceeds

for losses to any Lot or Common Area for reason other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Project.

(g) Any institutional holder of a first mortgage (or trust deed) of a Lot in the Project will, upon request, be entitled to (i) examine the books and records of the Project during normal business hours; (ii) receive a financial statement of the Project within 90 days following the end of any fiscal year of the Project; and (iii) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(h) Whenever there is a change of ownership of a Lot, the Association shall require that the new Owner furnish the Board with the name of the holder of any first mortgage (or trust deed) affecting such Lot.

NOTES:

## ARTICLE XIII

### DECLARANT RIGHTS AND CONTROL

#### 13.1 Administrative Control of Association

Declarant shall assume full administrative control of the Association through an appointed interim Board of Directors, which shall serve until the Turnover Meeting.

The Turnover Meeting shall be held at the Declarant's option and sole discretion but shall not be held later than three (3) years from the date ninety-nine percent (99%) of the total number of Lots are sold.

Declarant may elect to relinquish control of the Association at an earlier time by written notice to Owners and the Turnover Meeting shall be held within ninety (90) days of such notice.

#### 13.2 Other Rights

In addition to any other rights under the Project Documents, as long as Declarant owns at least one (1) Lot within the Property, Declarant:

(a) Sales Office and Model. Shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

(b) "For Sale Signs." May maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant, at reasonable locations on the Property, including without limitation, the

Common Area.

#### (c) Approval of Amendments.

Consistent with Section 14.1, for so long as the Declarant owns at least one Lot within the Property, Declarant shall have the right to approve all amendments to the Project Documents proposed by the members.

#### 13.3 Easements Reserved to Declarant

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as Common Area, or otherwise designated as an easement area over any road or Common Area on the Property, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Map.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located, together with the right and

(c) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable

period of time, and for such alterations of the contour of the land as may be necessary or desirable to effect such purposes.

(d) The reservation to Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the project and the provision of utility services, and related services and facilities.

(e) The Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Project in, over, through, upon and across any and all of the roads, streets, avenues, alleys, and open space and in, over, through, upon and across each and every Lot in any easement area set forth in this Declaration or as shown on the Plat.

(f) The Declarant further reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets,

alleys, rights of way or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as laid down and shown on the Map.

(g) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

(h) Declarant further reserves unto itself, for itself any successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Property other than those Lots conveyed to Owners, including any Common Area which may have previously been conveyed to the Association, for all purposes necessary or appropriate to the full and final completion of construction of the Project.

NOTES:

**ARTICLE XIV****MISCELLANEOUS****14.1 Amendment**

Except as provided below, Any amendment hereto shall require (i) the affirmative vote of at least sixty-seven percent (67%) if all Class A membership votes, which Members present in person or represent by proxy are entitle to cast at a meeting duly called for such purpose and so long as the Class B membership exists, (ii) the written consent of the Declarant, the vote of at least sixty-seven percent (67%) of the Percentage Interests of all of the Owners in person or represented by proxy at a meeting of the Association at which a quorum is present shall be required to amend this Declaration or the Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board. In such instrument the Board shall certify that the vote required by this Paragraph for amendment has occurred.

Notwithstanding anything in this Declaration, so long as the Class B membership exists, the written consent of the Declarant is required to amend this Declaration or the Map.

**14.2 Consent Equivalent to Vote**

Notwithstanding anything to the contrary, in those cases in which the Project Documents requires the vote of a stated percentage of the Owners for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining the necessary percentage of votes in any manner authorized by the Bylaws.

**14.3 Service of Process**

The registered agent of the Association, as described on the Utah State Department of Commerce's records is the person authorized to receive service of process.

In the event that the corporate status of the Association expires, then the President of the Board shall be the successor substitute process agent. In the event that the corporate status expires, the Board shall specify such successor or substitute agent and his or her address by written instrument to be kept at the Association's principal place of business.

**14.4 Duty of Owner to Pay Taxes on Lot Owned**

It is understood that each Lot in the Project is subject to separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and assessments authorized by law, and that as a result thereof, no taxes will be assessed or levied against the Project as such, except for certain personal properties thereof. Accordingly, each Owner will pay and discharge any and all taxes and assessments which may be assessed against them on their Lot.

**14.5 Covenants to Run With Lands; Compliance**

This Declaration and all the provisions hereof shall constitute covenants which run with the land and constitute equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association, all parties who hereafter

acquire any interest in or occupy a Lot or any part of in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, assigns, guests and invitees. Each Resident of a Lot shall comply with, and all interests in all Lots shall be subject to the terms of the Project Documents and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association, or, in a proper case, by an aggrieved Owner. By acquiring any interest in a Lot each Resident consents and agrees to be bound by and subject to each and every provision of the Declaration. Should the Association be required to take action hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise, the Association may recover all costs and expenses, including a reasonable attorney's fee, which may arise or accrue.

#### ***14.6 Information Regarding Transferee of Lot***

Any Owner who sells, leases, or otherwise disposes of his Lot shall submit to the Board pertinent information concerning the transferee or new Resident within one week of any transfer of title or possession on a form furnished by the Board.

#### ***14.7 Indemnification of Board of Directors***

Each member of the Board shall be indemnified and held harmless by the Owners against all costs, expenses, and fees, reasonably incurred by them in connection with any proceeding to which he may become involved by reason of his being or having been a Board member.

#### ***14.8 Invalidity***

The invalidity of any provisions of this Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

#### ***14.9 Waiver***

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

#### ***14.10 Gender***

The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

#### ***14.11 Topical Headings***

The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define, limit, extend, or otherwise affect the content, meaning or intent of this Declaration or any paragraph or provision hereof.

#### ***14.12 Conflicts***

In the event this Declaration conflicts with the provisions of any other Project Document, the provisions of this

Declaration shall control.

***14.13 Effect of Recorded Instruments***

At any point in time, the Declaration and the Record of Survey Map concerning each phase which is then a part of the Project shall constitute the constituent parts of a single Declaration and Record of Survey Map affecting the Project. Accordingly, in the event the provisions of the separate

instruments conflict irreconcilably, the terms of that instrument which is last recorded shall control.

***14.14 Effective Date***

This Declaration shall take effect upon recording in the office of the Weber County Recorder in Ogden, Utah.

NOTES:

IN WITNESS WHEREOF, the Declarant, has caused this Declaration to be executed by its duly authorized officers on the 4 day of April, 2007.

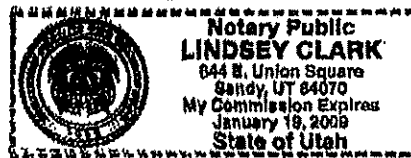
DECLARANT

[Signature]  
By: David Gifford  
Its: Manager

STATE OF UTAH )  
                          :ss.  
County of Salt Lake

On this 4 day of April, 2007, personally appeared before me David Gifford who being by me duly sworn, did say that they are the agent of Declarant authorized to execute this Declaration.

[Signature]  
NOTARY PUBLIC





**EXHIBIT A**  
**(Legal Property Description)**

All of Units A through I, Parcel No. 2, Colonial Gardens Townhouses, Riverdale City, Weber County, Utah. Together with the Limited Common Area appurtenant thereto.

Parcel Nos.: 08-401-001 through 08-401-009

All of Units J through R, Parcel No. 1, Colonial Gardens Townhouses, Riverdale City, Weber County, Utah. Together with the Limited Common Area appurtenant thereto.

Parcel Nos.: 08-401-010 through 08-401-018

All of Units S through V, Parcel No. 3, Colonial Gardens Townhouses, Riverdale City, Weber County, Utah. Together with the Limited Common Area appurtenant thereto.

Parcel Nos.: 08-401-019 through 08-401-022

All of Units W through Z, Parcel No. 4, Colonial Gardens Townhouses, Riverdale City, Weber County, Utah. Together with Limited Common Area appurtenant thereto.

Parcel Nos.: 08-401-023 through 08-401-026

Together with all Common Areas located with in Parcel Nos., 1 through 4, Colonial Gardens Townhouses, Riverdale City, Weber County, Utah.

Parcel No.: 08-401-027



\*12300960\*

E# 2300560 PG 1 OF 3  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
24-OCT-07 4:40 PM FEE \$40.00 DEP VD  
REC FOR: KTRK, A. CULPINORE & ASSOCIATES  
ELECTRONICALLY RECORDED

WHEN RECORDED RETURN TO:  
The Law Office of Kirk A. Culpinore  
644 East Union Square  
Sandy, UT 84070

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR COLONIAL GARDENS TOWNHOMES**

This Amendment to the Declaration of Covenants, Conditions, and Restrictions is made this 24 day of October, 2007 by Colonial Gardens Homeowners Association, Inc. (the "Association").

**RECITALS**

A. The Declaration of Covenants, Conditions, and Restrictions was recorded in the Weber County Recorder's Office as Entry 2253884, as amended and supplemented (the "Declaration").

B. This amendment shall amend the Declaration as noted below and shall apply to the lands described in Exhibit "A" and shall be binding against all of the property described in the Declaration and any annexation, expansion or supplement thereto;

C. The Association desires to change various provisions in the Declaration to provide a modern and more workable legal environment for the community;

D. Pursuant to Article XIV, Section 14.1 of the Declaration, the Association has obtained the affirmative vote or written consent of at least sixty-seven percent (67%) of the combined Class A and Class B votes and the Declarant has consented to this amendment.

NOW, THEREFORE, the Association hereby amends the following sections of the Declaration, to read as follows:

Article VIII, Section 8.10, shall be amended to read as follows:

**8.10 Leases**

Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of the Project Documents and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing and shall be filed with the Association.

Leases shall also prohibit smoking and shall require that tenants who own pets will register the pets with the Association.



EF 2300560 PG 3 OF 3

**EXHIBIT A**  
**Legal Description**

All of Units A through I, Parcel No. 2, Colonial Gardens Townhouses, Riverdale City, Weber County, Utah. Together with the Limited Common Area appurtenant thereto.

Parcel Nos.: 08-401-001 through 08-401-009 <sup>001</sup> ✓

All of Units J through R, Parcel No. 1, Colonial Gardens Townhouses, Riverdale City, Weber County, Utah. Together with the Limited Common Area appurtenant thereto.

Parcel Nos.: 08-401-010 through 08-401-018 <sup>0010</sup> ✓ <sup>0018</sup> ✓

All of Units S through V, Parcel No. 3, Colonial Gardens Townhouses, Riverdale City, Weber County, Utah. Together with the Limited Common Area appurtenant thereto.

Parcel Nos.: 08-401-019 through 08-401-022 <sup>0019</sup> ✓ <sup>0022</sup> ✓

All of Units W through Z, Parcel No. 4, Colonial Gardens Townhouses, Riverdale City, Weber County, Utah. Together with Limited Common Area appurtenant thereto.

Parcel Nos.: 08-401-023 through 08-401-026 <sup>0023</sup> ✓ <sup>0026</sup> ✓

Together with all Common Areas located with in Parcel Nos., 1 through 4, Colonial Gardens Townhouses, Riverdale City, Weber County, Utah.

Parcel No.: 08-401-027 <sup>0027</sup> ✓



\*W2524311\*

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WHEN RECORDED RETURN TO:  
Colonial Gardens Homeowners Association, Inc.  
c/o FCS Community Management  
PO Box 5555  
Draper, UT 84020  
801-256-0465  
**manager@hoaliving.com**

ER 2524311 PG 1 OF 2  
ERNEST O ROWLEY, DEER COUNTY RECORDER  
22-APR-11 1226 PM FEE \$46.00 DEP JWC  
REC FOR: FCS COMMUNITY MANAGEMENT

Space Above for Recorder's Use Only

**Parcel #'s: 08-401-0001 through 08-401-0009**  
(ALL OF UNITS A THROUGH I, PARCEL NO. 2, COLONIAL GARDENS TOWNHOUSES, A P.U.D)  
**Parcel #'s: 08-401-0010 through 08-401-0018**  
(ALL OF UNITS J THROUGH R, PARCEL NO. 1, COLONIAL GARDENS TOWNHOUSES, A P.U.D)  
**Parcel #'s: 08-401-0019 through 08-401-0022**  
(ALL OF UNITS S THROUGH V, PARCEL NO. 3, COLONIAL GARDENS TOWNHOUSES, A P.U.D)  
**Parcel #'s: 08-401-0023 through 08-401-0026**  
(ALL OF UNITS W THROUGH Z, PARCEL NO. 4, COLONIAL GARDENS TOWNHOUSES, A P.U.D)

**NOTICE OF ASSESSMENT & NOTICE OF REINVESTMENT FEE COVENANT**

Each Lot or Unit in Colonial Gardens is subject to recurring assessments. Escrow agents, title companies, or others desiring current information as to the status of assessments should contact **FCS Community Management**; PO Box 5555; Draper, UT 84020. The phone number is **801-256-0465**. The email address is **manager@hoaliving.com**.

This notice affects the parcels referenced above and any subsequent parcels added to the community via appropriate expansion documentation.

ADDITIONALLY, please note that the Buyer or Seller of a Lot or Unit at Colonial Gardens shall be required to pay to the Colonial Gardens Homeowners Association, Inc. at the time of closing or settlement of the sale of his or her Lot or Unit a Reinvestment Fee in a sum to be determined by the governing board.

This is not a large master planned development. The amount of the Reinvestment Fee may not exceed .5% of the value of the Lot or Unit at the time of closing unless the Lot or Unit is part of a large master planned development and shall comply with the requirements of Utah Code Ann., Section 57-1-46(5) (2010) as amended or supplemented.

The name of the association of owners responsible for the collection and management of the Reinvestment Fee is the Colonial Gardens Homeowners Association, Inc. (the "Association") and the address is c/o **FCS Community Management**; PO Box 5555; Draper, UT 84020. The phone number is **801-256-0465**. The email address is **manager@hoaliving.com**.

The Reinvestment Fee Covenant is intended to run with the Land and to bind successors in interest and assigns thereof.

The existence of this Reinvestment Fee Covenant precludes the imposition of any additional Reinvestment Fee Covenant on the Land or any Lot.

The duration of the Reinvestment Fee Covenant is ongoing until amended or supplemented.

The purpose of the Reinvestment Fee is limited to one or more of the following: common planning, facilities, and infrastructure; obligations arising from an environmental covenant; community programming; resort facilities; open space; recreation amenities; charitable purposes; or association expenses (including, but not limited to, administrative set-up fees).

The Reinvestment Fee required to be paid under the Reinvestment Fee Covenant shall benefit the burdened property.

IN WITNESS WHEREOF, the Association has executed this notice the 3rd day of January, 20 11.

COLONIAL GARDENS HOMEOWNERS ASSOCIATION, INC.

By: [Signature]  
Name: Michael Johnson  
Title: Authorized Representative/Managing Agent

**ACKNOWLEDGMENT**

STATE OF UTAH )  
 )ss:  
COUNTY OF Weber )

On the 3rd day of January, 20 11, personally appeared before me Michael Johnson, who by me being duly sworn, did say that he is the Authorized Representative/Managing Agent of the Colonial Gardens Homeowners Association, Inc., and that the within and foregoing notice was signed in behalf of said Association by authority of its Board of Trustees, and said Michael Johnson duly acknowledged to me that said Association authorized the same.

[Signature]  
NOTARY PUBLIC

