

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATION OR GRANT OF
EASEMENTS, AND HOME OWNERS ASSOCIATION
FOR LOMA VISTA & TOOEE HEIGHTS SUBDIVISION¹**

This Declaration of Covenants, Conditions, Restrictions and Reservations or Grant of Easements (hereinafter referred to as the "Declarations"), is made and executed this 12th day of October, 2007, by Compass Holdings, LLC ("Declarant") in contemplation of the following facts and circumstances:

A. Declarant is the fee title owner of certain real property situated in the City of Tooele, County of Tooele, State of Utah, known as all of Loma Vista Subdivision (inclusive of Tooele Heights Phase), as such Plat is shown on the Official Records of the Tooele County Recorder, (hereinafter collectively the "Property").

B. Declarant desires that the Subdivision be developed and the improvements thereon be constructed generally in accordance with a master plan and general scheme of development into a residential community known as Loma Vista.

THEREFORE, to further the general purposes herein expressed, Declarant for itself, its successors and assigns, hereby declares that all of the Property shall at all times, be owned, held, used, and occupied subject to the provisions of the Declaration and subject to: (i) the covenants, conditions, and restrictions herein contained; (ii) the easements herein reserved or granted; and (iii) the Home Owner's Association dues.

I. DEFINITIONS.

1.1 "*Committee*" shall mean that committee as described in Section 3, herein, that is charged with the responsibility of review and approval of all items set forth in said Section 3.

1.2 "*Lot*" shall mean any area of real property within the Subdivision designated as a Lot on any subdivision plat recorded or approved by Declarant.

1.3 "*Maintenance Charges*" shall mean any and all costs assessed against an Owner's Lot and to be reimbursed to the Committee for work done pursuant to Section 5 and fines, penalties and collection costs incurred in connection therewith.

1.4 "*Owner*" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot. If there is more than one owner of record of legal title to a Lot then notice to any one of such owners of record shall be deemed notice to all owners of record.

1.5 "*Park Strip*" shall mean the area in front of a lot bordering the street beginning with the front line of the lot and extending to the public asphalt roadway. The Park Strip

¹ This version of the CCRs incorporates revisions from the first and second amendments.

shall include the sidewalk.

1.6 "Subdivision" shall mean, collectively, all of the lots situated within Loma Vista Subdivision as recorded in the Official Records of the Tooele County Recorder that is expressly made subject to the terms and conditions of this Declaration.

1.7 "Association" shall mean the Loma Vista Home Owners Association, a Utah limited liability company; the Loma Vista Home Owners Association Articles of Organization are attached hereto as Exhibit "A" and incorporated by this reference.

1.8 "Member" shall mean and refer to every person who holds membership in the Association.

2. OWNERS BOUND BY COVENANTS, RESTRICTIONS, AND EASEMENTS

2.1 *Each Owner Bound by Terms of Declaration.* Each Owner, by acceptance of a deed to a Lot is deemed to have read and agreed to be bound by the terms and conditions of this Declaration.

3. DESIGN REVIEW COMMITTEE

3.1 *Purpose.* In order to create, maintain and improve the Subdivision as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, to establish procedure for the enforcement of the terms and conditions of this Declaration to protect and promote the value of the Subdivision, the exterior design of all improvements constructed within the Subdivision shall be subject to the prior review and approval of the Design Review Committee.

3.2 *Creation of Design Review Committee.* The Design Review Committee (the "Committee") shall consist of three (3) members, the majority of which shall constitute a quorum, and the concurrence of the majority shall be necessary to carry out the provisions applicable to the Committee. The initial Design Review Committee will consist of: Joshua Yeates, Jared Yeates, and Matthew Yeates. Committee members shall be replaced at some time before the sale of the last lot in the Subdivision. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor.

3.3 *Committee Duties.* The Committee shall be responsible for the review and approval of all plans for the construction of any improvements upon any Lot, for the enforcement of the provisions of this Declaration. In addition to the authority herein expressly given, the Committee shall have such rights, powers and privileges as shall be reasonably necessary to give effect to this Declaration and the enforcement thereof.

3.4 *Use of Consultants.* The Committee is hereby authorized to retain the services of one or more consulting architects, landscape architects or urban designer, licensed to practice in

the State of Utah, to advise and assist the Committee in performing the design review function prescribed in this Declaration and to carry out the provisions set forth herein.

3.5 *Construction Cleaning and Design Review Deposit.* Concurrent with submittal of the proposed home plans for each Lot, each Owner (may be waived for purchasers of eight or more lots) shall be required to pay Construction Cleaning and Design Review Deposit (the "Deposit") in the amount of three hundred dollars (\$300.00) to the committee before any home plans shall be reviewed or approved by the Committee. The Deposit will be held and used by the Committee as set forth in this Section. Upon completion of the construction of improvements upon the Owner's lot, the Owner shall be entitled to a refund of One Hundred Dollars (\$100.00), provided that the Lots and public improvements adjacent to the Owner's Lot are free of construction debris and damage resulting from construction on Owner's Lot. Said Owner shall be required to cause said adjacent Lots and public improvements to be free from construction debris and damage and no refund shall be made until the Owner has so complied. In the event such Owner shall not so comply, then the Committee shall be entitled to use said funds in payment of costs and expenses incurred to do so. In the event that the cost of removal of said construction debris and/or repair of damage is in excess of One Hundred Dollars (\$100.00) then any such amount in excess of One Hundred Dollars (\$100.00) shall constitute a Maintenance Charge that is subject to repayment pursuant to Section 5, by the Owner of the applicable Lot. The balance of the deposit shall be retained by the Committee to pay costs and expenses incurred in reviewing plans, including payment to consultants, architects, planners or members of the Committee.

4. COVENANTS, CONDITIONS, AND RESTRICTIONS

4.1 *Use of Lots and Resale.* All Lots within the Subdivision shall be used only for the construction and occupancy of one single family dwelling, together with a private attached garage for not less than three vehicles. The Committee may grant a variance of the garage minimum based on special circumstances. Off-street parking must be provided for an equivalent number of vehicles for the construction of typical residential amenities such as in family swimming pool, tennis court, etc. All Lots shall be used, improved and devoted exclusively for such single-family residential use. The Committee may grant a variance, at its discretion, to this provision allowing for the use of a lot without a home on it so long as it complies with relevant provisions of applicable City Codes and with all other provisions of the Declarations and standards as approved by the Committee. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any such property and no person shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage without review and approval by the Committee and the appropriate official of Tooele City.

4.2 *Architectural Control.* No grading, excavation, building, fence, wall, residence or other structure, or alteration of any kind shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specification thereof showing the location of all improvements has been approved in writing by the Committee. The Committee, at its sole option, may also require the Owner to submit a topographical plan and/or a detailed landscaping plan for review and approval. All subsequent additions to or changes or alterations in any building or other structure, including exterior color scheme, shall be subject to the prior written approval of the Committee. Subsequent to receiving approval of the Committee and prior to the commencement of

construction, each Owner will be responsible for obtaining a building permit from Tooele City.

4.3 *Design Review Deadlines.* Upon receipt by the Committee of a written request for approval provided for or required by this Agreement, the Committee shall, within fifteen (15) days after receipt of such request for approval, either: (a) approve the plans and specifications as submitted; or (b) notify the party making such request of any objections thereto (such objections to be specifically stated) and such party may within fifteen (15) days thereafter resubmit its request for approval rectifying any such objection to the Committee. The Committee shall then have an additional seven (7) days after receipt of said revisions to approve or disapprove the same. Failure to give any written notice of disapproval within the periods provided for above shall constitute approval thereof by the Committee.

4.4 *Construction Quality, Size, and Height.* All structures constructed on the Property shall be of new materials and shall be of good quality workmanship. ALL EXTERIOR MATERIALS AND COLORS ARE TO BE SPECIFIED ON PLANS AND SUBMITTED FOR APPROVAL BY THE COMMITTEE. The Committee will base its approval of construction plans, specifications, landscaping plans, and other alterations on the acceptability and harmony of the external design of the proposed structures with respect to topography and grade, quality of materials, size, height, color, etc.

4.4.1 *Materials and Colors.* Only those exterior materials which will blend harmoniously with the natural environment, with earth-toned colors, shall be permitted. All dwellings constructed shall have twenty-five percent (25%) minimum of brick or stone (cultured stone is acceptable) on the front facing portion of the dwelling. All out-buildings, that are not pre-manufactured (i.e. storage shed), shall adhere to the same quality and requirements as a dwelling and shall be submitted for approval by the committee. No chain-link fence shall be permitted. No aluminum, vinyl, or wood exterior siding shall be permitted on any dwelling with the exception of a Masonite-type, or hardi-plank material in combination with brick, rock and/or stucco if approved by the Committee. Log structures are prohibited. All stacks and chimneys for fireplaces in which combustible material other than natural gas, fire burned shall be fitted with smoke arresters. All owners shall strictly comply with all state laws and City ordinances pertaining to fire hazard control. Notwithstanding the foregoing, the Committee may grant approval to any color scheme, at its discretion, so long as it fits an overall style or look and contributes to the quality of the subdivision as determined in the sole discretion of the Committee.

4.4.2 *Roof Pitch and Quality.* An Architectural grade asphalt shingle shall be the minimum roof quality. The typical roof pitch shall be at least 6/12 and no greater than 12/12. The Committee may grant a variance of the minimum roof pitch based on special circumstances.

4.4.3 *Minimum Size of Dwellings.* No dwelling shall be permitted on any Lot wherein the stacking is more than two and one-half (2 ½) stories in height, and total ground floor area of the main structure, exclusive of garages and open porches, is less than the following area measurements.

4.4.3.1 For a single-story dwelling, 1,400 square feet, not including basement area.

4.4.3.2 For a two-story dwelling, 1,800 square feet, not including basement area.

The foregoing notwithstanding, the Committee may grant to any Lot within the Subdivision a variance from the above Minimum Size Requirements if the Committee determines, in its sole discretion, that due to the unique configuration and topography of such Lot it would be unfeasible to construct upon such Lot a structure that would conform with the Minimum Size Requirements.

4.5 *Construction Time.* The construction time for the exterior portion of any structure, shall not exceed twelve (12) months from start to finish. "Start" shall be the instant any dirt is cut or removed in anticipation of the landscaping or construction to be built. All building debris, excavation, excessive dirt, etc. associated with the building process shall be removed within the twelve (12) month period. Such debris and excavation dirt shall not be permitted on any of the streets or sidewalks.

4.6 *Building Location.* All setbacks, side yards, and rear yard shall be in conformance with Tooele City Ordinances in effect at the time of construction.

4.7 *Landscaping.* Landscaping may include a combination of lawn, shrubs, or ground cover. Ground cover may include vegetative vines, low-spreading shrubs, or annual or perennial flowering or foliage plants. Ground cover may also include mineral or non-living organic permeable material in not more than 25% of the net landscaped area (i.e. rocks, boulders, gravel, etc.) Driveway and other flat paved areas may be concrete, stamped concrete, asphalt, quarry tile, brick, or paving blocks. Gravel areas are not permitted. Trees, lawns, shrubs and other plantings provided by the Owner either before or after construction of a residence upon said Lot shall be properly nurtured and maintained or replaced at the Owner's expense upon request of the Committee. No fence, wall, hedge or screen shall be erected that would obstruct sight lines or otherwise constituted a traffic hazard, particularly near driveways and street intersections. No planting or structures shall be placed or permitted which may damage or interfere with established slope ratios, create erosion or change the direction of drainage channels. All material used to retain and contour the slope of any Lot or improvement must conform to the natural beauty and color of the Subdivision. Each dwelling unit shall have installed surrounding it an outdoor sprinkler system for fire protection and irrigation.

4.8 *Deadline for Completion of Landscaping.* The front yard of each Lot (from the street to the front line of the residence on the Lot) shall be landscaped within one (1) year of the occupancy date of any structure built upon said Lot. The remainder of the Lot shall be landscaped within two (2) years of the occupancy date of any structure built upon said Lot. Weeds shall be removed and maintained from the time that the lot is purchased.

4.9 *Temporary Occupancy and Temporary Buildings.* No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

4.10 *Out Buildings.* It is understood that out building such as swimming pool and tennis court dressing facilities may be constructed on any Lot as long as they are in conformity with the requirements of this Declaration and are approved by the Committee. All pools must be fenced in

strict compliance with local ordinances.

4.11 *Exterior Antennas and Power Lines.* Exterior antennas are prohibited. The location of T.V. dishes must be out of the view of the front of the lot. All power lines and similar type cables shall be buried underground.

4.12 *Nuisances; Construction Activities.* No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick block, lumber and other building materials will be piled neatly.

4.13 *Parking or Storage of Vehicles.* No articles, material, equipment or vehicles of any nature shall be parked or stored on any street located within the Subdivision. Licensed, regularly used passenger vehicles (i.e. visitor vehicles) may be parked in the streets of the Subdivision for brief periods of time (i.e. less than twenty-four hours). Overnight parking of such vehicles should generally be restricted to the driveway of the dwelling being visited. No automobiles, trailers, boats, racks, snowmobiles, motor homes, recreational vehicles or any other type of vehicles shall be stored on driveways, unless behind the front line of the house.

4.14 *Garbage and Refuse Disposal.* No Lot shall be used as or maintained as a dumping ground for rubbish, trash, or other waste and such materials shall not be kept except in covered containers. All Trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during collection. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. The burning of rubbish, leaves or trash within the Subdivision is prohibited. Each Lot and its abutting street are to be kept free of trash, weeds, and other refuse by the Lot Owner. No unsightly material or objects are to be stored on any Lot in view of the general public.

4.15 *Signs.* With the exception of a sign which states that the premises are for sale, no signs, poster, displays or other advertising devices shall be erected or maintained on, or shown or displayed to the public view on any Lot without the express written consent of the Committee. The Committee may cause all unauthorized signs to be removed. This section shall not apply to any signs used by Declarant or its agents in connection with the original construction and sale of the Lots.

4.16 *Repair of Improvements.* No improvements on any Lot shall be permitted to fall into disrepair and such improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then subject to the approvals required by Section 4.2 above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

4.17 *Restrictions on Further Subdivision, Property Restrictions and Rezoning.* No Lot shall be further subdivided or separated into smaller Lots by any Owner, nor shall any easement or other interest therein be conveyed or transferred by any Owner without the prior written approval of the Committee, which approval must be evidenced on the plot or other instrument creating the subdivision, easement, or other interest. No further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Committee and any covenants, conditions, restrictions, or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot, and no applications for variances or use permits shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Committee and the proposed use otherwise complies with this Declaration.

4.18 *Declarant's Exceptions.* Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within the Subdivision.

5. MAINTENANCE

5.1 *Purpose of Maintenance Charge.* In order to create, maintain and improve the Subdivision as a pleasant and desirable environment, to establish and preserve a harmonious design for the community and to protect and promote the value of the Subdivision, each Owner covenants and agrees to maintain its Lot in accordance with the terms of this Declaration, or be subject to the assessment of Maintenance Charges to be levied by the Committee as hereinafter provided.

5.2 *Maintenance of Park Strip.* Each Owner shall be responsible to landscape and maintain the Park Strip fronting on each Owner's Lot. This maintenance will include, without limitation, the mowing and watering of the designated park strips, removal of weeds, clearing of debris, and other general care, removal of snow from the sidewalk. In the event that any Owner shall fail to landscape or maintain the Park Strip, whether such failure is caused through the failure to act or the willful or negligent act of any Owner, his family, guests or invitees, or otherwise, then, subject to the provisions of Section 5.4, the Committee shall have the right to cause such landscaping and maintenance to be performed and the cost of such maintenance or repairs, shall constitute a Maintenance Charge to which such Owner's Lot shall be subject and the Maintenance Charge shall be secured by the Maintenance Charge Lien as set forth herein.

5.3 *Improper Maintenance of Lot.* Each Lot within the Subdivision shall be maintained by its Owner without regard to whether or not any improvements have been constructed thereon by said Owner. In the event that: (a) any portion of any Lot is so maintained as to present a public or private nuisance; or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Subdivision which are substantially affected thereby or related thereto; or (b) any portion of a Lot is being used in a manner which violates this Declaration; or (c) any Owner fails to maintain acceptable vegetation on any slope greater than 30% on said Owner's Lot; or (d) any Owner fails to perform any of its obligations under this Declaration or the architectural guidelines and standards of the Committee; then, subject to the provisions of Section 5.4, the

Committee shall the right to cause such landscaping and maintenance to be performed and the cost such maintenance or repairs, shall constitute a Maintenance Charge to which such Owner's Lot shall be subject and the Maintenance Charge shall be secured by the Maintenance Charge Lien as set forth herein.

5.4 *Notice to Owner.* In the event that any Park Strip or Lot is not maintained or repaired as set forth herein, then the Committee may, by resolution, make a finding to such effect. Said Resolution shall specify the particular condition or conditions which exist on said Lot. Upon adoption of such a Resolution, the Committee shall give written notice thereof to the Owner of the applicable Lot, that unless the conditions stated in the Resolution are corrected within fourteen (14) days of the date of such notice, the Committee shall have the right without further notice or demand, to cause the conditions set forth in the Resolution to be corrected said Owner's cost. If at the expiration of said fourteen (14) days the requisite corrective action has not been taken, the Committee shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become part of the Maintenance Charge levied against said Lot and shall be secured by the Maintenance Charge Lien. The Maintenance Charge shall be levied against only the Lot set forth in the Resolution adopted by the Committee. Written notice of the amount of Maintenance Charge levied shall be given to the Owner of the Lot. The Maintenance Charge shall be due and payable in full within fifteen (15) days of the date of such notice.

5.5 *Maintenance Charge Lien.* The Maintenance Charges, together with interest, costs, and reasonable attorneys' fees, shall be secured by a lien (the "Maintenance Charge Lien"), on the Lot to which such charges relate in favor of the Committee, and such charges, costs, expenses shall be a continuing servitude and lien upon the Lot against which each such charge is made until paid in full. The Maintenance Charge Lien shall be a charge on the Lot which each such assessment is made until paid in full. Each such Maintenance Charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time the Maintenance Charge becomes due. The Maintenance Charge Lien may be foreclosed by the Committee in the same manner as a mortgage on real property upon the recording of a Notice of Delinquent Maintenance Charge as set forth in Section 5.6 hereof, provided, however, there shall be no right to redeem the Lot from the purchaser of the Lot at any foreclosure sale conducted pursuant to such action. The Committee shall be entitled to purchase the Lot at any such foreclosure sale.

5.6 *Effect of Nonoavirent.* Any Maintenance Charge not paid within fifteen (15) days of the date of written notice of the amount thereof shall be deemed delinquent and shall bear interest at the rate of eighteen percent (18%) per annum from due date until paid. The Owner of the applicable Lot shall be liable for all costs, including attorney's fees, which may be incurred by the Committee in collecting the same. The Committee may also record a Notice of Maintenance Charge Lien against any Lot as to which a Maintenance Charge is delinquent. The Notice shall be executed by a member of the Committee, set forth the amount of the unpaid assessment, the name of the delinquent Owner and a description of the Lot. The Committee may establish a fixed reasonable fee to reimburse the Committee for the Committee's cost in recording such Notice, processing the delinquency and recording a release of said lien, which fixed fee shall be treated as part of the Maintenance Charge of the Committee secured by the Maintenance Charge Lien. The Committee may bring an action at law against the Owner personally obligated to pay the delinquent assessment and/or foreclose the lien against said Owner's Lot. Commencement of an action against said Owner shall not be deemed to be a waiver of the right to foreclose the lien granted herein unless and until all amounts are due and paid in full. No Owner may waive or otherwise avoid liability for the

assessments provided for herein by non-use or abandonment of his Lot.

5.7 *Priority of Lien.* The Maintenance Charge Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is a lender (or its successors or assigns) who has previously lent funds the security of which is the Lot against which the Maintenance Charge Lien is assessed, and shall also be subject to and subordinate to liens for taxes and other public charges. Except as provided above, the Maintenance Charge Lien shall be superior to any and all charges, liens or encumbrances. Sale or transfer of any Lot shall not affect the Maintenance Charge Lien.

6. EASEMENTS

6.1 *Drainage, Park-strip and Public Utility Easements.* Easements for installation and maintenance of utilities and drainage facilities and other uses are reserved as shown on the recorded plat or as shown on Exhibit "B", attached herewith. Lots 23, 24, 31-35, 48-56, and 108-113 have a drainage channel easement located 15 feet from the rear of the back property line up to the rear property line. Within these easements no structure (including fences), planting or other material shall be placed or permitted to remain which may damage or interfere with the drainage channel, or which may change the direction or flow of drainage channel in the area, or which may obstruct or retard the flow of water through the drainage channel or easement. All lots along Skyline Dr. (lots 23-28, 101-105) have an easement located behind the fence, on the rear six feet of the lot for a landscape park-strip, and all lots along Droubay Rd. (lots 1, 56-58, 113, 120-124) have a park-strip located behind the fence. It is contemplated that lots 2 and 3 will be converted into a common open space area with the possibility of some future amenities. All park-strips and open space areas shall be maintained by the HOA. The easement area of each of the Lots and all improvements on it shall be maintained continuously by the Owner of the Lot, except for those improvements for which the HOA, public authority or utility company is responsible.

7. TERM AND AMENDMENTS

7.1 *Term; Method of Terminations.* This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date of recordation. From and after said date, this Declaration as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners (based upon one vote per Lot) casting seventy-five percent (75%) of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if at least ninety percent (90%) of the votes cast by all Owners shall be cast in favor of termination at an election held for such purpose. No vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of recorded in the Tooele County records a "Certificate of Termination", duly signed by a member of the Committee and acknowledged before a Notary Public. Thereupon, the covenants herein contained shall have no further force and effect and the Committee shall be dissolved pursuant to the terms set forth in its articles.

7.2 *Amendments.* This Declaration may be amended by recording in the Tooele County records a "Certificate of Amendments", duly signed and acknowledged as required

for a Certificate of Termination. The Certificate of Amendment shall set forth in full these amendments adopted and shall certify that at an election duly called and held pursuant to the provisions of the articles and bylaws of the Committee the Owners causing seventy-five percent (75%) of the votes at the election, voted affirmatively for the adoption of the amendment. Any amendment shall be effective only if the written consent from the holders of recorded first mortgages or deeds of trust on seventy-five percent (75%) of the Lots upon which there are such recorded first Mortgages deeds of trust is obtained.

7.3 *Variances.* The Committee may grant a variance to any provision of the Declarations, at its discretion, when circumstances may require and in keeping with the spirit of the covenants.

8. HOME OWNERS ASSOCIATION

8.1 *Membership.* Every Owner upon acquiring title to a Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his/her ownership of such Lot ceases for any reason, at which time his/her membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

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

8.2.1 *Class A.* Class A members shall be all Owners, but excluding the Declarant until the Class B membership ceases. Class A members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held.

8.2.2 *Class B.* Declarant shall be the sole Class B Member. The Class B Member shall be entitled to 5 votes for each Lot which it owns. The Class B membership shall automatically cease and be converted to Class A membership when the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member(s).

8.3 *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, but in no event shall more than one Class A vote be cast with respect to any Lot. 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 entire vote attributable to the Lot concerned unless an objection is made at the meeting by another Owner of the same Lot, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.

8.4 *Record of Ownership.* Every Owner shall promptly cause to be filed of record the conveyance document to him/her of his/her Lot and shall file a copy of such conveyance document with the secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a Mortgage which has priority over the

lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the mortgagee and also of the release of such Mortgage; the secretary of the Association shall maintain all such information in the record of ownership.

8.5 *Duties of the Association.* Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligations and duties to do and perform each and every one of the following for the benefit of title Owners and the maintenance and improvement of the Property:

8.5.1 The association shall accept all Owners as Members of the Association.

8.5.2 The Association shall provide and be responsible for the management, control, operation, care, maintenance, repair, replacement, and upkeep of the Easement Areas, and shall keep the same in good, clean, attractive, safe and sanitary condition, unless, until and except to the extent that such responsibility is transferred to and accepted by some other authority, public agency, or utility.

8.6 *Powers and Authority of the Association.* The Association shall have all the powers set forth in its Articles of Incorporation, together with its general powers as a limited liability company, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided.

8.7 *Association Rules.* The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things, the use and maintenance the Easement Areas.

8.8 *Limitation of Liability.* No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, the Design Committee or the Managing Agent.

8.9 *Personal Obligation and Lien.* Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay to the Association the annual and special assessments described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Easement Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor

for all unpaid annual and special assessments, late payment fees, interest and costs of collection which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

8.10 *Purpose of Assessments.* Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Easement Areas, maintenance, repair, and improvements of the Easement Areas, management and supervision of the Easement Areas establishing and funding of a reserve to cover major repair or replacement of improvements within the Easement Areas and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance, repairs and replacement of those elements of the Easement Areas that must be maintained, repaired or replaced on a periodic basis.

8.11 *Annual Assessments.* The Association shall from time to time and in its discretion set the amount of the annual assessment in an amount reasonably estimated by the Association to be sufficient to meet the obligations imposed by this Declaration and on the basis specified in Section 8.14 below. Notwithstanding any other provision of the Declarations to the contrary the Committee or offers of the HOA may consider, review and accept a single in-lieu lump sum payment of (i) HOA dues or estimated future HOA dues that would otherwise be owing and payable in the future under the Declaration; or (ii) any other charges permitted or provided for under the Declarations.

8.12 *Special Assessments.* From and after the date set under Section 8.15 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas. Any such special assessment must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

8.13 *Quorum Requirements.* The quorum at any meeting required for any action authorized by Section 8.12 above shall be as follows: At the first meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all of the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 8.12) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty- five (45) days following the immediately

preceding meeting.

8.14 *Uniform Rate of Assessment.* All annual and special assessments authorized by Section 8.6 and 8.7 above shall be fixed at a uniform rate for all Lots. Late payment fees shall be \$25.00.

8.15 *Annual Assessment Due Dates.* The annual assessments provided for herein shall commence as to all Lots as of the second month following conveyance. At least fifteen (15) days prior to the effective date of any change in the amount of annual assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

8.16 *Certificate Regarding Payment.* Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

8.17 *Effect of Nonpayment - Remedies.* Any assessment not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

8.18 *Foreclosure of Lien as Trust Deed.* The lien for nonpayment of assessments may enforced by sale or foreclosure of the owner's interest therein by the Association. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association may require the appointment of a receiver to collect the rental amount without regard to the value of the mortgage security. The Association may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same. If the Association elects to foreclose on the lien in the same manner as a deed of trust, then the owner by accepting a deed to the Lot or otherwise accepting the conveyance of an interest in the property, hereby irrevocably appoints the attorney of the Association (provided he is a member of the Utah State Bar) as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in *Utah Code Annotated* 57 -1-23 (1953), as amended from time to time. In addition owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

8.19 *Subordination of Lien to Mortgages.* The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such first Mortgage or purchaser who comes into possession of a Lot by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Lot from the lien of any assessment thereafter becoming due.

9. MISCELLANEOUS

9.1 *Interpretation of the Covenants.* Except for judicial construction, the Committee shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Committee's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration and provisions hereof.

9.2 *Severability.* Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity of enforceability or any of the other provisions hereof.

9.3 *Rule Against Perpetuities.* Each provision contained in this Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints or alienation shall continue and remain in full force and effect for the period of 21 years following the death of the last survivor of the issue of President George W. Bush, and the now living children of said issue, or until this Declaration terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect in accordance with Section 9.1 hereof.

9.4 *Rules and Regulation.* The Committee shall have the right to adopt rules and regulations with respect to all aspects of the Committee's rights, activities and duties, provided said rules and regulation are not inconsistent with the provisions of this Declaration.

9.5 *General Reservation.* Declarant reserves the right to grant, convey, sell, establish, amend, release and otherwise deal with easements, reservations, exceptions and exclusions which do not materially interfere with the best interests of Owners and/or the Committee including, but not limited to access and utility easements, road easement, pedestrian and equestrian easement, pedestrian and hiking trail and easement and drainage easements.

9.6 *Run with the Land.* Declarant for itself, its successors and assigns, hereby declares that all of the Subdivision shall be held, used and occupied subject to the provisions of this

Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in the Subdivision.

IN WITNESS WHEREOF, Declarant has hereunto caused its name to be signed as of the day and year written.

Loma Vista, LLC a Utah Limited Liability
Company, and Tooele Heights, LLC, a Utah Limited Liability Company