

19
When Recorded, Return To:
QUALITY PROPERTIES INC.
113 East 200 North #2
St. George, UT 84770

DOC # 20120023880

Restrictive Page 1 of 19
Russell Shirts Washington County Recorder
07/20/2012 11:54:05 AM Fee \$ 46.00
By SOUTHERN UTAH TITLE CO



**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
AND EASEMENTS FOR
TONAQUINT HEIGHTS**

Declaration of Covenants, Conditions, Restrictions, and Easements for

TONAQUINT HEIGHTS

a residential subdivision in
ST. GEORGE, UTAH

This Declaration of covenants, conditions, restrictions, and easements is made on the date set forth below by QUALITY PROPERTIES INC., ("*Declarant*").

DECLARATION, INTENT, AND BINDING EFFECT

Declarant owns certain real property in Washington County, Utah, that is more particularly described in Exhibit "A," which is attached hereto and incorporated herein by this reference. Declarant desires and intends to protect the value and desirability of the Property as a harmonious and attractive residential subdivision. Therefore, Declarant hereby declares that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, and easements, and to the Plat recorded concurrently. The covenants, conditions, restrictions, and easements in this Declaration and the Plat shall be construed as covenants of equitable servitude; shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

ARTICLE 1

DEFINITIONS AND CONCEPTS

The following definitions and concepts shall control in this Declaration. Any terms used in this Declaration that are not defined shall have their plain and ordinary meaning.

1.1. "*Additional Property*" means and refers to any real property which is adjacent or contiguous to, or otherwise within the vicinity of the Property, whether or not so described herein or on the Plat. When Additional Property is annexed to this Declaration, it shall become part of the Property.

1.2. "*Declarant*" means the undersigned, and its successors and assigns.

1.3. "*Declaration*" means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder.

1.4. *"Declarant Control Period"* means the period of time until (a) Declarant relinquishes in writing its powers under this Declaration; (b) 100% of the Lots on the Property are sold; or (c) residential structures have been constructed on 80% of the Lots on the Property.

1.5. *"Design Code"* means and refers to the architectural rules, regulations, standards, guidelines, and procedures adopted by the Architectural Control Committee pursuant to the authority of Article 3 of this Declaration.

1.6. *"Governing Documents"* means, collectively, this Declaration, the Design Code, and any rules and regulations established pursuant to the authority of any of the foregoing documents, as any such documents may be amended from time to time.

1.7. *"Lot"* means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership.

1.8. *"Lot Owner"* means and is synonymous with the term "Owner".

1.9. *"Non-Disturbance Area"* means and refers to those portions of the Property set aside from development for preservation in its natural state.

1.10. *"Open Space"* means all real property, including the improvements thereto and facilities thereon, so designated on the Plat and dedicated to St. George City for the public's use and benefit.

1.11. *"Owner"* means the entity, person, or group of persons owning fee simple title to any Lot which is within the Property.

1.12. *"Plat"* means the subdivision Plat recorded herewith prepared and certified by a Utah Registered Land Surveyor and any amendments or replacements thereof, or additions thereto.

1.13. *"Property"* means that certain real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration.

1.14. *"Subdivision"* is synonymous with the term Property.

ARTICLE 2
PROPERTY RIGHTS

2.1. **Owners' Acknowledgment and Notice to Purchasers.** All Owners are given notice that use of their Lots is limited by the Governing Documents. Each Owner, by acceptance of a deed on his or her Lot, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by the Governing Documents and the Governing Documents may change from time to time. All purchasers of Lots are on notice that because of the potential for changes in the Governing Documents, copies of any such documents they might receive from any seller may have been superseded and amended.

2.2. **Land Use and Building Type.** All Lots, and the homes constructed thereon, shall be used only for single family residential purposes. No professional, business or commercial use shall be made of the same, or any portion thereof; provided, however, that the Lot restrictions contained in this section shall not be construed in such a manner as to prohibit an Owner or resident from (a) maintaining a personal professional library; (b) keeping personal business, or professional records or accounts; or (c) handling personal, business or professional telephone calls or correspondence.

2.3. **Lot Sizes.** Lot sizes as described on the Plat are considered minimum Lot sizes and no person shall further subdivide any Lot other than as shown on the Plat. Lots may not be combined for construction of a single home.

2.4. **Non-Disturbance Area.**

2.4.1. Description and Purpose. Non-Disturbance Area is any portion of the Property that is set aside from development and intended to be preserved in its natural state. The purpose of designating such portions of the Property as Non-Disturbance Area is to maintain unique and sensitive natural features thereby preserving scenic views and elements of the Property's desert character. Non-Disturbance Area may be located in certain portions of Open Space and/or certain portions of any Lot.

2.4.2. Designation. The Declarant, during the Declarant Control Period, shall have the right to designate any portion of the Property, whether owned by Declarant, a Lot Owner or by St. George City, as Non-Disturbance Area. This designation may be made by: (i) indicating or designating on the Plat the Non-Disturbance Area or (ii) designating, depicting, and/or describing such Non-Disturbance Area in any supplemental declaration or any exhibit thereto. The Declarant reserves the right to re-designate Non-Disturbance Area as it deems necessary.

2.4.3. Rights of Use and Rules and Regulations Concerning Non-Disturbance Areas. No Lot Owner or any other person shall have the right to excavate, grade or otherwise construct improvements upon the Non-Disturbance Area, nor may any person remove any natural vegetation or rock therefrom.

ARTICLE 3

ARCHITECTURAL CONTROLS AND BUILDING STANDARDS

3.1. **Architectural Control Committee.** There is hereby created an Architectural Control Committee ("ACC") to administer the provisions of this Article 3. The ACC shall consist of a minimum of three (3) persons. During the Declarant Control Period, the Declarant shall be entitled to appoint all members of the ACC and said members shall serve at the pleasure of the Declarant upon such terms and conditions as the Declarant may designate. At the conclusion of the Declarant Control Period, Declarant may in its sole discretion disband the ACC or provide for its continued operation under the management of Owners.

3.2. **Architectural Approval.** No structure or thing shall be constructed, placed, erected, or installed upon any Lot or to any structure and no improvements or other work (including staking, clearing, excavation, grading and other site work, paving, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Property until the plans and specifications showing, without limitation, the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the ACC in accordance with this Article and the Design Code adopted by the ACC pursuant to the authority of this Article. ACC approval shall be required regardless of whether the structure, building, fence, wall, or thing to be constructed, placed, erected, or installed is new, or an addition, extension or expansion, change or alteration, or reconstruction, replacement, re-erection, or re-installation of any of the foregoing.

3.3. **New Construction; Modifications.** Except as otherwise expressly provided for herein, the provisions of this Article are applicable to all new construction as well as any modifications, remodeling, or rebuilding of any existing, destroyed, or damaged structures within the Property.

3.4. **Design Code.** The ACC shall establish a Design Code which shall govern and contain: (i) the rules, regulations, standards, guidelines, and procedures for the submission, review, and approval of any plans submitted to it for review; (ii) the rules and regulations for construction activities within the Property; (iii) the rules, regulations, standards, and guidelines with respect to any external apparatus, sign, or thing (e.g., satellite dishes, antennae, flag poles, signs, lawn ornaments, etc.) within the Property; and (iv) any other matters concerning the overall aesthetics of the Property. Because it is impossible to cover every contingency and because there are some aspects of architectural design that do not lend themselves to being

easily articulated, the ACC shall have broad authority and discretion in establishing regulations, standards, and guidelines and in reviewing and approving plans submitted to it for review, which authority includes, but is not limited to, designating Non-Disturbance Area on each Lot, designating area within each Lot as permissible building and landscape area, establishing timetables for submission of applications and commencement and completion of construction and landscaping. The ACC shall have the right to amend the Design Code as it deems necessary and appropriate from time to time. The ACC shall make the Design Code available to any Lot Owner upon request.

3.5. Exemptions from ACC Approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications; *provided however*, that any deviation or change from the originally approved color scheme or plans and specifications shall require ACC approval. Any Owner may remodel, paint or redecorate the interior of his or her home without approval; *provided however*, that modifications to the interior of screened porches, patios, and similar portions of a structure visible from outside the structure shall require ACC approval.

3.6. Fees; Damage Deposit. The ACC may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by the ACC and/or any architects, engineers or other professionals retained to assist in the ACC's review. The ACC may also establish and require a damage deposit to be submitted with an application for approval. The ACC may draw on the deposit to cover any fines and penalties levied by the ACC; costs and expenses of enforcement of this Article 3 and the Design Code against the Owner; or to cover the cost of damage to any curbs, sidewalks, gutters, driveways, asphalt, or other improvements caused by construction on the Owner's Lot.

3.7. Compensation; Reimbursement for ACC Expenses. Compensation of the members of the ACC, if any, shall be at the discretion of Declarant. Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Committee function or duty. In the event the ACC retains professional consultants to assist the ACC in its duties it may pay said professionals the reasonable, fair-market value of said professional services. Fees paid to the ACC as part of the application process shall be used to offset any of the foregoing expenses.

3.8. Execution of Decisions and Duties. The ACC may carry out its duties by conducting meetings which are open to Lot Owners or may perform its reviews and carry out its duties and functions on a less formal basis.

3.9. **Rights of Approval.** The ACC shall have the right to refuse or approve any plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from neighboring property. Decisions of the ACC may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters by the ACC are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The ACC shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with this Article and the Design Code.

3.10. **Implied Powers of the ACC.** In addition to the rights or privileges expressly given to the ACC by this Declaration and the Design Code, the ACC may also exercise any right or privilege reasonably implied from such documents.

3.11. **Prohibited Structures.** Notwithstanding anything in the Design Code, the following structures shall be prohibited within any part or portion of the Property: dome structures, log homes, pre-manufactured homes; and re-located homes. Earth or Berm homes of any type are also not allowed. No structure of a temporary nature, including but not limited to a trailer, bus, basement-only residence, motor home, outhouse, tent, shack, garage, shed, or other outbuilding shall be used at any time as a residence either temporarily or permanently, nor shall any such structures be erected or placed on the Property at any time. No old or second-hand structures shall be moved onto any of the Lots. The ACC may, by rule, make this provision more restrictive or comprehensive.

3.12. **Enforcement Authority.** The ACC is vested with authority to enforce its Design Code, including but not limited to, the authority to establish and levy fines, penalties, and interest, initiate legal proceedings, and abate or enjoin any violation thereof, and take any other action to enforce the provision of its Design Code as is authorized by this Declaration. Lot Owners shall not have the right or authority to enforce the Design Code.

3.13. **Application to Declarant.** The Declarant shall not be required to comply with the provisions of this Article or any rules, regulations, standards, or procedures established pursuant to the authority of this Article with respect to any of its activities on the Property. The Declarant may, in its discretion, grant to any Owner or builder an expedited ACC review process.

3.14. **Non-Liability; Waiver; Indemnification.** The Design Code is intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property; it does not create any duty to any person or entity. When the ACC undertakes its review it is not doing so

for the purpose of ensuring the structural or mechanical integrity or soundness of approved construction or modifications; ensuring compliance with building codes and other governmental requirements; or ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to any Owner, wherever situated within the Property, or to any neighboring property owners. Accordingly, it shall bear no responsibility for ensuring any of the foregoing. The Declarant, the ACC, or any committee or member thereof, and each of their respective officers, directors, partners, members, predecessors, successors, assigns, parents, affiliates, subsidiaries, and the agents and employees of any of them, shall not be held liable, and each Lot Owner, for him or herself and his or her successors, heirs, and assigns, hereby agrees to hold the foregoing harmless, for: any soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder within Property; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction or modifications to any structure.

ARTICLE 4
USE AND CONDUCT

4.1. **Safe Condition.** Without limiting any other provision of this Declaration, each Owner shall maintain and keep their Lot and any improvements thereon in a safe, sound, and sanitary condition and shall correct any condition or refrain from any activity that might endanger the health of or interfere with the safety or reasonable enjoyment of other Owners of their respective Lots.

4.2. **Care and Maintenance of Lots.** Each Owner shall be responsible for the maintenance and upkeep of his Lot and shall keep the same free from rubbish, litter, and noxious weeds. All structures, landscaping, and improvements shall be maintained in good condition and repair at all times.

4.3. **Hazardous Activities.** No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue or fire pit unit while attended or within a safe and well-designed interior fireplace.

4.4. **Motorbikes; ATVs.** All motorcycles, trail bikes, ATV's, three-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only by individuals with driver's licenses and only for ingress, egress, and access purposes on

established streets and parking areas. Such vehicles are specifically prohibited from all other portions of the Property, and are to be used on said streets only and not for recreational purposes anywhere within the Property.

4.5. **RVs; Boats.** No boats, trailers, buses, motor homes, campers, recreational vehicles, or other such vehicles, shall be stored within the Subdivision. Such vehicles may only be parked within the Subdivision on a temporary basis not to exceed one week per occurrence.

4.6. **Inoperable Vehicles.** Inoperable motor vehicles shall not be permitted to remain upon any street or Lot or road areas adjacent thereto. In the event an inoperable motor vehicle remains upon any Lot or road area for a period exceeding seventy-two (72) hours, the Declarant or other Lot Owners residing within the Property may remove the inoperable motor vehicle after a three (3) day written notice. The cost of such removal shall attach to the vehicle and the Lot as a valid lien in favor of the persons, entities, or parties causing such removal. For the purpose of this section, "inoperable motor vehicle" shall mean any motor vehicle that cannot be operated in a normal manner upon the streets under its own power, or is unlicensed or unregistered for a period of at least sixty (60) days.

4.7. **Weed Control.** Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials on his Lot so as to minimize weeds, fire and other hazards to surrounding Lots, homes, Open Space, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants which are injurious to crops, animals, land, or the public health or may create a fire hazard.

4.8. **Pest Control.** No Lot Owner shall permit any thing or condition to exist upon his Lot which would induce, breed, or harbor infectious plant diseases or noxious pests. Each Owner shall perform such pest control activities on his Lot as may be necessary to prevent insects, rodents, and other pests from being present on his Lot.

4.9. **Nuisances.** No Lot, part or portion of the Property shall be used for any noxious or offensive activity, nor shall anything be done which may be or may become an annoyance to the Subdivision.

4.10. **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such Lot or portion of the Property.

4.11. **Animals, Livestock, Poultry, and Agriculture.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, part or portion of the Property excepting, however, that dogs, cats, or other domesticated household pets, three (3) or less in total number may be kept in a home constructed on a Lot, provided that they are not kept, bred, or maintained for any commercial purpose. Permitted domesticated pets shall be strictly controlled and kept pursuant to all applicable laws and ordinances and shall be on a leash or inside a fence when outside the Owner's home. Owners must take due care to ensure that their pets and animals do not make excessive noises, cause any offensive smell, or create any physical threat to the safety of any other Owner or person within the Subdivision.

4.12. **Garbage and Refuse Disposal.** No Lot or part or portion of the Property shall be used or maintained as a dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste as produced within the Property shall be kept in sanitary containers inside a structure except when placed for collection. No rubbish, trash, papers, junk, or debris shall be burned upon the Property except that trash may be burned in accordance with applicable laws and ordinances inside homes that are properly equipped with inside incinerator units.

4.13. **Sewage Disposal.** Each home shall be connected to and use the public sewage disposal system. No individual sewage disposal system shall be permitted on any Lot, part or portion of the Property.

4.14. **Leases and Leasing.** Leasing is permitted within the Property. Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, and that any failure by lessee to comply with the terms of the same shall be a default under the lease.

4.15. **Slope and Drainage Control.** Construction of improvements and installation of landscaping shall be done in such a way that drainage water is retained on the Lot and/or conveyed to appropriate drainage facilities. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

ARTICLE 8 ENFORCEMENT

8.1. **Violations Deemed a Nuisance.** Every violation of this Declaration or any rule or regulation established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration or by law.

8.2. **Legal Action Authorized.** The Declarant and any Lot Owner, shall have the right to enforce, by any legal proceeding, all provisions of this Declaration or any rule or regulation established pursuant to the authority of this Declaration against any person, persons, or entities violating or attempting to violate any provision of this Declaration or any rule or regulation established pursuant to the authority of this Declaration, to restrain or abate or otherwise recover damages for the violation, and against the land to enforce any charge or lien created by this Declaration. Notwithstanding the foregoing, no Lot Owner is authorized to initiate legal action over any plan, design, or other matter approved by the ACC.

8.3. **Attorney Fees and Costs.** The prevailing party in any action to enforce this Declaration or any rule or regulation established pursuant to the authority of this Declaration shall be entitled to an award of reasonable attorney fees, costs, and other litigation expenses incurred in such action.

8.4. **Nonexclusive Remedies.** All the remedies set forth in this Declaration are cumulative and not exclusive to any others provided in the Governing Documents or by law or in equity.

ARTICLE 9 SPECIAL DEVELOPMENT RIGHTS

9.1. **Intent and Purpose of Special Development Rights.** In addition to any other rights granted or reserved to the Declarant in this Declaration and the other Governing Documents, and notwithstanding any covenants, conditions, restrictions, or other provisions of limitation within this Declaration, the Declarant, as the developer of the Property, is granted special development rights. These rights maximize the flexibility of the Declarant to adjust the size and mix of the Property to the demands of the marketplace, both before and after creation of the Subdivision.

9.2. **Expansion of the Property.** The Declarant shall have the right to expand the Property by unilaterally subjecting any Additional Property, in whole, in part, or in phases, to this Declaration during the Declarant Control Period.

9.2.1. **Expansion Procedure.** The Declarant shall indicate its intent to have such Additional Property bound by this Declaration on the plat of such Additional Property and shall record a declaration of annexation or supplemental declaration including and subjecting such Additional Property to this Declaration. Thereafter, such Additional Property shall be considered as part of the Property in all respects, and lots therein shall constitute Lots under this Declaration.

9.2.2. Use of Expansion Property. Any Additional Property annexed hereto by the Declarant shall be exclusively for residential single-family dwellings, architecturally compatible to the homes already constructed on the Property. The Declarant shall have the sole discretion as to development and disposition of Open Space in any Additional Property in the same manner as Open Space in the initial Property.

9.3. **Withdrawal of Property.** So long as it has the right to expand the Property, Declarant shall have the right to remove any portion of the Property which has not yet been improved with structures from the coverage of this Declaration. The procedure for such withdrawal shall follow the procedure for expansion as provided in this Article.

9.4. **No Obligation to Expand or Develop.** Declarant has no obligation to annex any additional land to the Subdivision or to develop or preserve any portion of additional land in any particular way or according to any particular time schedule.

9.5. **Municipal Zoning and Subdivision Approvals.** The Declarant, during the Declarant Control Period, shall have the unilateral right to further subdivide the Property and to apply for any zoning or subdivision approvals or permits from St. George City or any other applicable governmental authority with respect to the Property or any adjacent property owned by Declarant, whether or not such adjacent property is annexed into the Subdivision. This right includes but is not limited to applying for and obtaining zoning permits, subdivision approvals, plat approvals, or approvals to amend the Plat or any plats. Further, to the extent the approval and consent of any Lot Owner is required under State or local law to apply for or obtain any such approval, each Lot Owner hereby waives his or her right to object to any such approval sought by Declarant and shall sign the application or other documents required for such action except for any such approval that would (a) affect title to the Owner's Lot or (b) alter the boundaries of an Owner's Lot.

9.6. **Declarant Business, Marketing, and Sales.** Notwithstanding any provisions to the contrary contained in this Declaration or any other Governing Documents, it shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction of homes and sale of Lots during the Declarant Control Period, and upon such portion of the Property including lots or Open Space, if any, as Declarant deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of any Lots or any Open Space and facilities thereon.

9.7. **Additional Development Rights.** The Declarant shall have the unilateral right to (a) dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; (b) convert any part or portion of the Property to a different regime of residential ownership; and (c) create or designate additional Open Space within the Property.

9.8. **Assignment of Declarant's Rights.** Any and all rights and powers of the Declarant contained in this Declaration and other Governing Documents may be delegated, transferred or assigned, in whole or in part, by the Declarant. To be effective, any such delegation, transfer, or assignment must be in writing, signed by Declarant, indicate the extent and nature of such assignment, and be recorded in the Office of the Washington County Recorder.

ARTICLE 10 EASEMENTS

The following easements are in addition to those created elsewhere in this Declaration, on the Plat, by any other recorded instrument, or otherwise by law.

10.1. **Utilities.** Utility easements are shown on the Plat. By virtue of such easements, it shall be expressly permissible for all public utilities serving the Property to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Property, provided that all such services shall be placed underground, except that said utilities may affix and maintain electrical and/or telephone wires, pipes, circuits and conduits on, above, across and under roofs and exterior walls. Should any utility furnishing a service covered by said easements request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said Property without conflicting with the terms hereof. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities. Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use in the Open Space, if any, and the right to connect to and use roadways and utilities serving the Property.

10.2. **Encroachments.** Each Lot and all Open Space within the Property shall be subject to an easement for encroachments created by construction, settling and overhangs, including but not limited to any fences or walls, or the paving of any streets, sidewalks, or roadways that are designed or constructed by the Declarant or on the Declarant's behalf. Any easement of encroachment shall be to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful

and knowing conduct on the part of, or with the knowledge and consent of, the person or entity claiming the benefit of such easement.

10.3. **Easement for Declarant.** The Declarant hereby reserves to itself and its successors and assigns easements over, beneath, and through the Property, including over the Open Space, for the purpose of making improvements to and developing the Property, including but not limited to construction, marketing, installation and upkeep of landscaping features, entrance features, project signage, street lights, paths, trails or sidewalks or other facilities or things benefiting the Property. The Declarant reserves to itself the right to make any dedications and to reserve, grant, vacate, or terminate any easements, rights-of-ways and licenses as may be reasonably required by any governmental authority or to carry out the intent and design of the Declarant's plan for development of the Property, without compensation therefor.

10.4. **Easement for ACC.** The ACC shall have an easement to go upon Lots to perform inspections to ensure that construction is being undertaken in accordance with plans approved by the ACC.

10.5. **Reservation for Construction.** Declarant hereby reserves for itself and its successors and assigns a perpetual easement and right-of-way over, upon, and across the Property for construction, utilities, drainage, and ingress and egress. The location of these easements and rights-of-way may be made certain by Declarant by instruments recorded in the office of the Washington County Recorder. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of Declarant, as long as such action does not interfere with the occupancy, use, enjoyment, or access to the Property by the Lot Owners.

10.6. **Drainage and Irrigation Easements.** Declarant reserves for itself and its successors and assigns an easement to enter on, across, over, in and under any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Declarant also reserves the right to use or delegate the use of any irrigation ditches existing on the Property on the date this Declaration is recorded, and Declarant reserves for itself and its successors and assigns the right to construct, access and maintain additional irrigation ditches and lines on the Property for the maintenance of the Open Space and for such other purposes as Declarant may from time to time deem appropriate.

10.7. **Limitation on Easements.** In no event shall any easement granted or reserved herein be construed to or have the effect of permitting entry into the interior portion of any

home on any Lot within the Property. Nor shall any easement granted or reserved herein be construed to or have the effect of changing the boundaries or lot lines of any Lot.

10.8. **Easements of Record.** The easements provided for in this Article and elsewhere in this Declaration shall in no way affect any other recorded easement.

ARTICLE 12
AMENDMENT

12.1. **Amendment by Declarant.** In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Lot; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) to correct any scrivener's error. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

12.2. **Amendment by Owners.** Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of Owners representing at least 67% of the total number of Owners in existence at the time of amendment.

12.3. **Amendment by Owners During Declarant Control Period.** No amendment made by the Lot Owners during the Declarant Control Period shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. Declarant's consent, to be effective, must be provided on the amendment and recorded in the Office of the Washington County Recorder.

12.4. **Effective Date.** Unless a later effective date is specified in the amendment, any amendment shall be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment. In the case of unilateral amendment by Declarant as provided for herein, such amendment shall be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment signed and verified by the Declarant.

12.5. **Validity.** If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

ARTICLE 13
GENERAL PROVISIONS

13.1. **Duration of Covenants.** The covenants, conditions, and restrictions contained herein shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth.

13.2. **Notices.** Any notice required under the provisions of this Declaration to be sent to any Lot Owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Owner.

13.3. **Dates and Times.** In computing any period of time prescribed or allowed by the Governing Documents, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday (either federal or Utah state), in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. The deadline of the last day of the period so computed shall be 5:00 P.M., Mountain Time.

13.4. **Construction and Severability.** All of the terms, provisions, covenants, conditions, and restrictions contained in this Declaration shall be construed together. Invalidation of any one of said terms, provisions, covenants, conditions, or restrictions, or any part thereof, shall not affect the enforceability or applicability any of the remaining terms, provisions, covenants, conditions, and restrictions, or parts thereof.

13.5. **Interpretive Conflicts.** In the event of any conflict between the provisions of any of the Governing Documents, the documents shall control in the following order of authority: (1) the Declaration; (2) the Design Code; and (3) any rule, regulation, or resolution passed pursuant to the authority of the foregoing documents.

13.6. **Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make

the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

13.7. **Waivers.** No provision contained herein shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations that may occur.

13.8. **Topical Headings.** The topical headings contained herein are for convenience only and do not define, limit, or construe the contents of these covenants.

* * *

[signature and acknowledgement on following page]

IN WITNESS WHEREOF, the undersigned has hereunto executed this Declaration this 16 day of July, 2012

DECLARANT:

Lori Burgess
By:
Its: Secretary

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 16 day of July 2012 before me personally appeared Lori Burgess, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that she is the Secretary of Quality Properties Inc., and did duly acknowledge to me that the foregoing document was entered into on behalf of such entity by authority of its Operating Agreement.

Debra Samler
NOTARY PUBLIC
Address: 1922 Carolina Cir St. George, UT 84790
My Commission Expires: 2-13-2016



EXHIBIT "A"
Legal Description

BEGINNING AT A POINT WHICH IS LOCATED N 88°26'10" W, ALONG THE SECTION LINE 788.27 FEET AND SOUTH 145.96 FEET FROM THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 43 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING ON THE WESTERLY BOUNDARY OF "TONAQUINT CHAPEL SUBDIVISION", ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED AND ON RECORD AT WASHINGTON COUNTY RECORDER'S OFFICE, STATE OF UTAH; AND RUNNING THENCE ALONG THE BOUNDARY OF SAID SUBDIVISION THE FOLLOWING FOUR (4) COURSES, (1) THENCE S 31°12'54" E 209.47 FEET; (2) THENCE S 33°04'32" E 30.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF CHANDLER DRIVE, SAID POINT ALSO BEING ON A 470.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, WITH A RADIUS WHICH BEARS S 33°04'32" E; (3) THENCE NORTHEASTERLY 275.28 FEET ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 33°33'29" TO THE POINT ON A 25.00 FOOT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT OF WHICH BEARS S 0°28'57" W; (4) THENCE SOUTHEASTERLY 40.03 FEET ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 91°43'52" TO A POINT ON THE WEST RIGHT OF WAY LINE OF "TONAQUINT DRIVE" ACCORDING TO THE OFFICIAL ROADWAY DEDICATION PLAT, DOC. #20070025280, FILED AND ON RECORD AT WASHINGTON COUNTY RECORDER'S OFFICE, STATE OF UTAH, SAID POINT ALSO BEING ON A 840.00 FOOT NON-TANGENT CURVE TO THE LEFT, WITH A RADIUS WHICH BEARS S 87°47'11" E ; THENCE ALONG THE SAID RIGHT OF WAY THE FOLLOWING TWO (2) COURSES, (1) ALONG THE ARC OF SAID CURVE 42.50 FEET THROUGH A CENTRAL ANGLE 2°53'55"; (2) THENCE S 0°41'06" E 346.10 FEET; THENCE N 87°40'33" W, LEAVING SAID RIGHT OF WAY, 18.08 FEET TO A POINT ON "THE ESTATES AT BLOOMINGTON", ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED AND ON RECORD AT WASHINGTON COUNTY RECORDER'S OFFICE, STATE OF UTAH; THENCE S 38°00'03" W ALONG SAID BOUNDARY 98.28 FEET; THENCE N 35°33'36" W, LEAVING SAID SUBDIVISION, 460.45 FEET; THENCE S 54°30'29" W 46.97 FEET; THENCE N 35°33'36" W 247.41 FEET; THENCE N 58°19'26" E 134.83 FEET TO THE POINT OF BEGINNING.

CONTAINS 3.07 ACRES