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Oakcrest Homeowners Association
900 E Donner Way
Salt Lake City, 841008

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BY: KLD, DEPUTY - WI 59 P.

SECOND AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

OF THE

OAKCREST GARDENS CONDOMINIUM PROJECT

THIS SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM for OAKCREST GARDENS (sometimes referred to as the "Declaration") is made and executed this 5th day of December, 2007, by the OAKCREST GARDENS MANAGEMENT COMMITTEE for and on behalf of the OAKCREST GARDENS HOMEOWNERS ASSOCIATION, (referred to in this Declaration as the "Association") pursuant to Article III, Section 31 of the Amended and Restated Declaration.

RECITALS:

A. Original Declaration. On February 6, 1964, the OAKCREST GARDENS CONDOMINIUM PROJECT (the "Project") was created by the filing for record in the office of the Recorder of Salt Lake County, Utah: (i) an instrument entitled "Enabling Declaration for OAKCREST GARDENS CONDOMINIUM PROJECT" (the "Original Declaration") as Entry No. 1977698, in Book 2152, at Page 236; and (ii) an instrument styled "Record of Survey Map of the OAKCREST GARDENS CONDOMINIUM PROJECT" (the "Original Map"), as Entry No. 1977697, in Book AA, at Page 92.

B. Prior Amendments.

1. Certificate of Amendment of Enabling Declaration for OAKCREST GARDENS CONDOMINIUM PROJECT (the "First Amendment"), dated March 1, 1981, as recorded in the office of the Country Recorder of Salt Lake County, Utah on April 8, 1981, as Entry No. 3552254, in Book 5234, at Page 740.

2. Amended and Restated Declaration of Condominium of the OakCrest Gardens Condominium Association dated March 1, 1995 ("Restated Declaration"), as recorded in the Salt Lake County Recorder's Office on April 26, 1995 as Entry 6067765, Book 7139, page 1785 to 1841.

3. First Amendment to the Amended and Restated Declaration of Condominium of the OakCrest Gardens Condominium Association, recorded in the Salt Lake County Recorder's Office on August 23, 1999 as Entry 7448817, Book 8304, page 0361.

4. Second Amendment to the Amended and Restated Declaration of Condominium of the OakCrest Gardens Condominium Association, recorded in the Salt Lake County Recorder's Office on August 28, 2001 as Entry 7986140, Book 8493, page 5520.

C. Real Property Affected. This Second Amended and Restated Declaration of Condominium for OAK CREST GARDENS affects that certain real property located in Salt Lake County, Utah described with particularity in Article II set forth below.

D. Intent. The Association now restates and amends the Restated Declaration, as previously amended, to eliminate irrelevant, outdated and immaterial clauses, and update the provisions of the Restated Declaration, including all prior amendments.

E. Approval. By signing this Declaration, the Management Committee certifies that, as required by Art. III, §31 of the Restated Declaration, as amended, it has submitted this Second Amended and Restated Declaration to a vote of the Unit Owners, that at least 67% of all Ownership Interests have approved it, and that no Eligible Mortgagees exist as of the date of this Declaration.

I. DEFINITIONS

When used in this Declaration (including in the above "Recitals"), each of the following terms shall have the meaning indicated. Any term used in this Declaration which is defined by the Act shall, to the extent permitted by the context of this Declaration, have the meaning given by the Act.

1. Act shall mean and refer to the Utah Condominium Ownership Act, Utah Code Annotated, Sections 57-8-1 through 57-8-39, (2006), as amended.
2. Association shall mean and refer to the OakCrest Gardens Homeowners Association, Inc.
3. Building shall mean and refer to the OAKCREST GARDENS multilevel structure containing Units.
4. Capital Improvement shall mean and refer to non-recurring expenses (as opposed to day-to-day items) to repair, maintain and replace significant fixed assets in the Project, such as roofs, roads, siding, sidewalks and recreational facilities or amenities intended to restore, enhance, improve or ameliorate the utility, value or beauty of the Common Areas or Facilities.
5. Car Stall shall mean and refer to each Parking Unit designated on Exhibit "A" to this Declaration or the Map.

6. Common Areas shall mean and refer to the following items:

- a. The real property and interests in real property previously submitted to the Act, including the entirety of the Tract, but excluding individual Units;
- b. All Common Areas and facilities designated as such in the Map;
- c. All Limited Common Areas and facilities designated as such in the Map;
- d. All foundations, roofs, and exterior walls, constituting a portion of or included in the improvements which comprise a part of the Project, and any halls, corridors, stairs, stairways, lobbies, entrances and exits which are designed for the use of more than one Unit;
- e. All installations for and all equipment connected with the furnishing of Project utility services such as telephone, electricity, gas, water and sewer;
- f. All heating and air conditioning units, tanks, pumps, motors, fans, compressors, ducts, and, in general, all apparatus, installations and facilities included within the Project and existing for common use;
- g. The Project outdoor grounds, lighting, fences, landscaping, sidewalks, open parking spaces, and roads;
- h. All portions of the Project not specifically included within the individual Units; and
- i. All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety, operation or management.

7. Common Area Fees shall mean and refer to all expenses incurred to operate and maintain the Project and the common areas, including sums designated for any reserve accounts or sinking fund, which are assessed against the Unit Owners for operating, maintaining or making Capital Improvements to the common areas and for administration, pursuant to Art. III §22.

8. Condominium Unit shall mean and refer to a Unit.

9. Condominium Project shall mean and refer to the OAKCREST GARDENS CONDOMINIUM PROJECT.

10. Declaration shall mean and refer to this Second Amended and Restated Declaration of Condominium of the OAKCREST GARDENS CONDOMINIUM PROJECT.

11. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

12. Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.
13. Improvement shall mean and refer to all existing structures and appurtenances to the property of every kind and type, including but not limited to all buildings, fixtures, walkways, utilities, plumbing and electrical systems, heating and air conditioning systems, roads, walkways, driveways, parking areas, storage facilities, fences, walls, stairs, landscaping, trees, shrubs, recreational facilities and amenities.
14. Land shall mean and refer to the real property submitted by this Declaration to the Act, and more fully described in exhibit B attached to and made a part of this Declaration.
15. Limited Common Areas shall mean and refer to those Common Areas designated in this Declaration or in the Map as reserved for the use of a certain Unit to the exclusion of the other Units.
16. Locker shall mean and refer to each Storage Unit designated in Exhibit "A" to this Declaration and on the Map.
17. Management Committee shall mean and refer to the Management Committee of the Association and the Project, established by Art. III, §12 of this Declaration.
18. Map shall mean and refer to the Original Map, as the same has been amended from time to time. No new Map is being submitted with this Declaration; and all references to the Map shall refer to the Map currently of Record in the Salt Lake County Recorder's Office.
19. Mortgage shall mean and refer to both a first mortgage or first deed of trust on any Unit. It does not include a uniform real estate contract, land sales contract or other similar security instrument.
20. Mortgagee shall mean and refer to a mortgagee under a first mortgage and a beneficiary under a first deed of trust on any Unit. It does not include a seller under a uniform real estate contract, land sales contract or other similar security instrument.
21. Occupant shall mean any tenant or other person using or occupying a Unit, other than the Unit Owner.
22. Owner shall mean and refer to the Unit Owner.
23. Parking Unit shall mean and refer to each Car Stall designated on the Map.
24. Permanent Resident shall mean and refer to anyone who resides in a Unit for more than four consecutive weeks or for more than eight total weeks in any calendar year. No Permanent Resident who is not an Owner may vote or hold office.

25. Project shall mean and refer to the OAK CREST GARDENS CONDOMINIUM PROJECT.
26. Property shall mean and refer to the land or real estate, and appurtenances, as shown on the Map, and as submitted to the Act by the Original Declaration.
27. Residential Unit shall mean a Unit intended for to be used and occupied as a residence.
28. Size shall mean and refer to the area of the floor space within a Unit, in square feet. The Size of each Residential Unit shall be rounded to the nearest whole number ending in five or zero. The Size of each Parking Unit shall be deemed to be 100 square feet, and the Size of each Storage Unit shall be deemed to be 55 square feet. The size of each Residential Unit shall be computed from the dimensions shown on the Map, and shall run from the interior surfaces of the walls surrounding the Residential Unit concerned. Each separate level, story, or floor within a Residential Unit shall be included in calculating the Size of the Unit. So long as it substantially complies with the provisions of this paragraph and is not arbitrary, the Management Committee's determination of the Size of a Unit paragraph shall be conclusive.
29. Storage Unit shall mean and refer to each "Locker" designated on the Map.
30. Tract shall mean and refer to the real property submitted by the Declaration to the terms of the Act.
31. Unit shall mean and refer to each interior space designated as a Unit on the Map.
- a. There are three types of Units as OAKCREST GARDENS: Residential Units, Parking Units and Storage Units.
 - b. Unless otherwise indicated, a reference to "Unit" includes all three types.
 - c. All exterior walls on the perimeters of a Residential Unit shall constitute a part of the Common Area, except that a Residential Unit shall include all windows and exterior and interior doors contained in its vertical and horizontal perimeters and intended for the sole use of each unit. A Residential Unit shall include any interior walls, partitions, floors, ceilings, and stairs which are wholly contained within its vertical and horizontal perimeters and the interior surfaces of any floors, ceilings, walls, or coverings which bound it; *provided, however*, that a Residential Unit shall not include pipes, wires, conduits or other utility lines running through it which are utilized for or which serve more than one Residential Unit, nor shall a Residential Unit include any load-bearing walls or floors comprising a part of the Building in which the Residential Unit is contained.
32. Unit Number shall mean and refer to the number, letter or combination thereof which designates a Unit.
33. Unit Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in a Unit.

The term Unit Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof; it does mean and include, however, jointly and severally, both the seller and buyer under a uniform real estate, land sales contract, or other similar instrument.

II. SUBMISSION

The parcel of real property located in Salt Lake county, Utah, known as the OAKCREST GARDENS CONDOMINIUM PROJECT, and described with particularity below, previously submitted to the Act and resubmitted hereby:

See Exhibit "B," attached hereto and incorporated herein by this reference.

SUBJECT TO the described easements and rights of way.

TOGETHER WITH all easements, rights of way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights of way; all easements and rights of way of record; any easements, rights of way, encroachments, or discrepancies shown on or revealed by the Map or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions, and restrictions:

1. Description of Improvements. The significant improvements included in the Project, which are now located upon the Tract, are one multilevel building, consisting of 51 Residential Units, 89 Parking Units, 66 Storage Units, a swimming pool, car stalls, lockers, exits, entrances, driveways, and walkways. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Map. The Project also contains other improvements of a less significant nature, such as outdoor lighting, fencing and landscaping.

2. Description and Legal Status of Units. Exhibit "B" to this Declaration and the Map shows the Residential Units, Parking Units, and Storage Units, as well as the Unit Number of each Unit, its location, dimensions from which its Size may be determined, and the Common Areas and Facilities to which it has immediate access. Parking Units and Storage Units may be conveyed separately from a Residential Unit, only in accordance with and subject to the requirements of Art. III, § 5.c. Each Residential Unit Owner shall have an undivided ownership interest in the Common Areas as calculated in §3 below. The undivided ownership interest in the Common Areas appurtenant to a Residential Unit may not be partitioned from the Residential Unit or the balance of the Common Areas.

a. Residential Units. Each Residential Unit shall include that part of the building contained within the boundaries of that Residential Unit, which boundaries shall be determined in the following manner:

- i. The upper boundaries shall be the plane of the lower surface of the ceiling slab;
- ii. The lower boundaries shall be the plane of the upper surface of the floor slab; and
- iii. The vertical boundaries of the Residential Unit shall be (a) the interior surfaces of the outside walls of the building bounding a Residential Unit; (b) the center line of any non-bearing interior walls bounding a Residential Unit; and (c) the interior surface of interior bearing walls bounding a Residential Unit.
- iv. Notwithstanding the foregoing, each Residential Unit shall include all the entirety of doors and windows on all exterior walls and interior bearing walls.

b. Parking Units. The Map and Exhibit "B" to the Declaration shows the vertical and horizontal dimensions of each Parking Unit. Except for a ceiling, however, the Parking Units are not enclosed and shall not be enclosed. Each Parking Unit shall include that part of the Parking structure containing the Parking Unit which lies within the boundaries of the Parking Unit, which boundaries shall be determined in the following manner:

- i. The upper boundaries shall be the plane of the lower surface of the ceiling slab;
- ii. The lower boundaries shall be the plane of the upper surface of the floor slab; and
- iii. The vertical boundaries shall be the planes passed through the center of the lines shown on the map in such a way that each plane is perpendicular to the floor slab.

c. Storage Units. The Map and Exhibit B to this Declaration shows a number of lockers which constitute Storage Units. The boundaries of each Storage Unit shall be determined in the following manner:

- i. The upper boundaries shall be the plane of the lower surface of the top of the Storage Unit;

ii. The lower boundaries shall be the plane of the upper surface of the bottom of the Storage Unit; and

iii. The vertical boundaries of the Storage Unit shall be the interior surface of the walls of the perimeter of the Storage Unit.

3. Computation of Percentage of Undivided Ownership Interest. The percentage of undivided ownership interest in the Common Areas which, at any point in time, is appurtenant to a Residential Unit shall be equal to the ratio of (a) the Size of such Residential Unit plus the size of any Parking Units and Storage Units owned by the Owner of the Residential Unit, rounded to the nearest multiple of 5, to (b) the aggregate Size of all Units. The Management Committee shall make minor adjustments as needed to ensure that the total undivided ownership equals 100.00%. The Management Committee will update its calculations of undivided ownership interest each October. In making the apportionment, the Management Committee will include all transfers of which it has received notice by October 1 of such year. The Management Committee's determination under this paragraph shall be conclusive.

4. Limited Common Areas. The Limited Common Areas contained in the Project consist of all patios, porches, balconies, and decks appurtenant to a Residential Unit, and any other Common Areas reserved for the exclusive use of a Residential Unit and designated on the Map.

5. Conveyancing.

a. Form of Conveyance. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Unit shall describe the interest or estate involved substantially as follows:

Unit No. ____ contained within the OAKCREST GARDENS CONDOMINIUM PROJECT as the same is identified in the Record of Survey Map recorded in Salt Lake County, Utah as Entry No. 1977697 (as said Record of Survey Map may have been amended or supplemented) and in the Declaration of Condominium of the OAKCREST GARDENS CONDOMINIUM PROJECT recorded in Salt Lake County, Utah as Entry No. 1977698, in Book AA, at Page 92 (as said Declaration has been previously amended or supplemented).

TOGETHER WITH the undivided ownership interest in said Project's Common Areas appurtenant to said Unit as more particularly described in said Declaration.

b. Non-Conforming Deeds. Regardless of whether or not the description employed in any instrument conveying or encumbering a Unit is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the percentage of undivided ownership interest in the Common Areas nor the right of exclusive use of a Limited Common Area shall be separated from the Residential Unit to which it appertains. Even if the instrument of transfer does not specifically mention such appurtenant Common Areas, the percentage of

undivided ownership interest in the Common Areas and the right of exclusive use of the appurtenant Limited Common Areas shall automatically accompany the transfer of the Residential Unit to which they relate.

c. Transfer of Parking Units and Storage Units Separately From a Residential Unit. A Residential Unit Owner may transfer a Parking Unit or Storage Unit separately from the Residential Unit, provided all terms of this Declaration are met.

i. The transferor and transferee must agree to the transfer in writing, and the conveyance must be in writing and recorded as an addendum to Exhibit A attached to and made a part of this Declaration.

ii. The transferee must be an Owner of a Residential Unit.

iii. At all times, each Residential Unit must have at least one Parking Unit and one Storage Unit appurtenant to it.

iv. The transferor must give written notice of the intended transfer to the Management Committee. No transfer will be effective until approved in writing by the Management Committee and an amendment to Exhibit A to this Declaration showing the transfer is recorded in the office of the Salt Lake County Recorder.

v. The transfer shall include the exclusive right to use such Parking Unit or Storage Unit, and shall decrease the undivided ownership interest of the Residential Unit from which it is transferred, and increase the undivided ownership interest of the Residential Unit to which it is transferred, in accordance with the formula set forth in Art. III. § 3.

vi. No instrument purporting to convey a Parking Unit or a Storage Unit separately from a Residential Unit, shall be valid unless it identifies the Residential Unit from which it was conveyed, and the Residential Unit to which it will be conveyed.

vii. All expenses of approval and recording shall be borne by the Owners of the affected Residential Units. All proposed transfers approved prior to October 1 will be included in the calculation of undivided ownership interest effective the following January 1. The Management Committee has no obligation to update the undivided ownership interest calculations more often than once per year, or prospectively.

viii. Under no circumstances may a Parking Unit or Storage Unit, or any right to use any Parking Unit or Storage Unit be conveyed by sale, lease, rental or other transfer to anyone not an owner of another Residential Unit, *provided however*, that a Residential Unit Owner may transfer a security interest in a Parking Unit or Storage Unit as part of a mortgage or deed of trust that also encumbers the Owner's Residential Unit.

6. Ownership and Use. Each Owner of a Unit, of whatever kind, shall be entitled to the exclusive ownership and possession of his or her Unit and to the ownership of an undivided interest in the Common Areas as set forth herein, subject to the following limitations and restrictions:

a. Nature and Restrictions on Ownership and Use in General. Each Unit Owner shall have and enjoy the privileges of fee simple ownership of his or her Unit. There shall be no requirements concerning who may own Residential Units, it being intended that they may and shall be owned as any other property rights by persons, corporations, partnerships, trusts, limited liability companies and other legal entities; provided, however, Storage Units and Parking Units shall only be owned by, or conveyed to, owners of Residential Units, and shall be only leased to or used by persons who reside in Residential Units.

i. Because OAKCREST GARDENS is a residential community, Residential Units shall be used only for residential purposes, except as permitted by this Declaration; and the Common Areas shall only be used in a manner consistent with the residential nature of the Project.

b. Rules and Regulations. The Association, acting through its Management Committee, shall have the power and authority to adopt by laws and administrative rules and regulations and, in its sole discretion, to impose reasonable user fees for the recreational facilities and amenities, including but not limited to the swimming pool and the common parking and storage facilities. Such rules, regulations and use restrictions shall be binding upon all Owners and Occupants, their families, guest and invitees.

c. Restrictions and Limitations of Use. The use of the Units, of whatever kind, is subject to the following guidelines, limitations and restrictions:

i. Occupants Bound. All provisions of the Declaration, the By Laws, and the administrative rules and regulations shall be binding upon all Owners and Occupants, their families, guests and invitees.

ii. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the creation or maintenance of a nuisance on the Project. This includes but is not limited to the following:

(1) The creation of any unclean, unhealthy, unsightly or unkempt condition on, in or about his or her Unit or the Common Areas;

(2) The storage of any substance, material, item, property or thing in, on or about a Unit or Common Areas that will cause such Unit or the Common Areas to appear to be in an unclean or untidy condition or that will be noxious to the senses;

(3) The storage of any substance, material, item or thing upon any Unit or in

the Common Areas that will emit foul or noxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents;

(4) The creation or maintenance of any noxious or offensive situation in or about any Unit;

(5) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress, or disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order.

(6) Maintaining any plants, animals, devices or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of other residents, their guests or invitees;

(7) Creating too much noise, especially after 11:00 p.m. and before 8:00 a.m.; and

(8) Creating too much traffic in and out of the Unit, especially after 11:00 p.m. and before 8:00 a.m.

(9) The use of any surveillance camera or other electronic recording device in the Common Areas or Facilities, or the taking of surveillance pictures or videos in the Common Areas or Facilities, without express prior written consent of the Management Committee.

iii. Unsightly Work, Hobbies or Unkempt Condition. The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions by a Unit Owner, contractor or other person performing any work in any Unit, shall not be pursued or undertaken on any part of the Project.

iv. Removing Dust & Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. Dust and debris shall not be swept off the balcony onto the Residential Units or Common Areas below, but shall be collected in a vacuum, dust pan or bin and disposed of properly.

v. Subdivision of Unit. No Unit shall be subdivided or partitioned.

vi. Firearms and Incendiary Devices. The use of firearms and incendiary devices within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB

guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

vii. Temporary Structures. No Owner or Occupant shall place upon any part of the Project any temporary structures, including but not limited to tents, trailers, sun porches, solariums, glass enclosures or sheds, without the prior written consent of the Management Committee.

viii. Trees, Shrubs, Bushes, Sight Distance at Intersections. All property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight.

ix. Utility Lines. No individual overhead utility lines, including lines for cable television, shall be permitted within the Project, except for temporary lines as required during construction.

x. Signs. No signs, windchimes, birdfeeders or similar objects may be placed on or attached to any Unit, patio or balcony, without the prior written approval of the Management Committee.

xi. Window Air Conditioning Units. No window air conditioning units or swamp coolers may be installed or maintained in any Unit.

xii. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on the Project.

xiii. Exterior Lighting. No exterior lights shall be displayed by Owners or Occupants except for seasonal Christmas decorative lights, which may be displayed between December 1 and January 10 only.

xiv. Business Use. No commercial trade or business may be conducted in or from any Unit unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Management Committee.

(1) The terms business and trade, as used in this sub-Section, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons

other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required for the activity.

(2) Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this sub-Section.

xv. On-Site Fuel Storage. No on-site storage of gasoline, propane, heating oil, or other fuels shall be permitted on any part of the Project, except as expressly permitted by this paragraph.

(1) The Management Committee may store that fuel necessary to operate and maintain the Community, provided it is stored in a separate facility designed for this purpose.

(2) No propane cylinders attached to a barbeque or grill shall be stored or used on individual decks or patios. Any open flame must be at least ten feet (10') away from any glass door or window. Non compliance with this provision shall subject the person to fines.

xvi. Heating of Units in Colder Months. In order to prevent breakage or leakage of water pipes during colder months of the year, and the resulting water damage, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to damage claims, the thermostats within all vacant or unoccupied Units shall be maintained with the heat in an "ON" position and at a minimum of sixty degrees Fahrenheit (except during power failures or periods when heating equipment is broken) from October through April, inclusive, or whenever the temperature outside is forecasted to or does reach thirty-two degrees Fahrenheit or below. Owners and Occupants of Units shall take all steps possible on a timely basis to keep the heating equipment, including but not limited to the thermostat, in good working order and repair. Notwithstanding any provision in this Declaration or in the bylaws to the contrary, the Management Committee may, after proper notice and a hearing, fine any Owner or Occupant up to the amount of the Association's insurance deductible or deny the Owner or Occupant the right to make a claim on the Association's policy of insurance for violation of this requirement.

xvii. Storage and Parking of Vehicles. No motor vehicle or trailer, including but not limited to any automobile, commercial vehicle, recreational vehicle, truck, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other transportation device of any kind may be parked or stationed in front of any garage, walkway, driveway, Unit or Common Area. Owners or Occupants may only park their vehicles within their Parking Units or in other designated areas. Visitors may only park temporarily in designated spaces and in accordance with rules and regulations designated and promulgated by the

Management Committee.

No Owners or Occupants shall repair or restore any vehicle of any kind upon any Unit or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement of such vehicle to a proper repair facility. No Parking Unit may be altered in such a manner that the number of automobiles which may reasonably be parked in the Parking Unit after the alteration is less than the number of automobiles that could have been reasonably parked in the Parking Unit as originally designed and constructed.

The parking areas are not designed for recreational or commercial size vehicles and the Management Committee has the right to make rules and regulations restricting their use.

xviii. Aerials, Antennas, and Satellite Dishes. No radio, television, satellite antenna, or other aerial, dish, tower, or transmitting or receiving structure, or support thereof, shall be erected, installed, placed, or maintained on the Project unless constructed, erected, installed, placed or maintained entirely within the enclosed portion of a Residential Unit or as permitted by the written consent of the Management Committee, or by the rules and regulations duly adopted by the Management Committee. However, the Association may construct, erect, install, place or maintain a radio, television or satellite antenna, or other aerial, dish, transmitting device or reception structure for a master satellite, television or radio system, should any such master system or systems be utilized by the Association and require any such fixtures.

xix. Pets. No pets, animals, livestock, reptiles or poultry of any kind shall be kept, raised, or bred in or on the Project.

xx. Windows and Window Coverings. No aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows in any Unit; however, sun shades and tinted windows are allowed.

xxi. Doors and Windows. To maintain the architectural integrity of the Project, all exterior doors, sliding doors and stationary door/window assemblies must match as closely as possible the original door and window design in finish, materials, and panel and glass size. Any Owner proposing to replace any door or window shall meet the following criteria:

- (a) Glass shall be thermopane;
- (b) Top and side rails shall not exceed 2-1/2" wide, and bottom rails shall not exceed 6" wide.
- (c) Frames shall be aluminum or aluminum clad. Fiberglass and vinyl cladding not

permitted.

(d) Owner shall submit to the Management Committee for approval manufacturer's specifications and final drawings prior to purchasing and installing any replacement window or door.

xxii. Exterior Alterations. To maintain the architectural integrity of the Project, no alterations may be made to any Unit that would change the appearance of any Common Area or limited Common area or the exterior of any Unit without the express written consent of the Management Committee, after review of detailed drawings and specifications for any proposed change.

7. Occupancy and Age.

a. In order to comply with local, state and federal law, and to create a safe, healthy and harmonious living environment, the use of the Residential Units is subject to the following:

i. Age. The community shall comply with all local, state and federal zoning and Fair Housing Acts as they now exist or as they may be enacted or amended in the future.

ii. Occupants. No more than two (2) Permanent Residents may occupy any one bedroom in a Unit at any time.

8. Leases.

a. General Provisions The Units must be owner occupied in order for the Association to: (a) protect the equity of the individual property owners at the Project ("the Project"); (b) carry out the purpose for which the Project was formed by preserving the character of the Project as a homogenous residential community of predominantly owner-occupied Units and by preventing the Project of assuming the character of an apartment, renter-occupied complex; and (c) comply with the eligibility, requirements for financing in the secondary mortgage market insofar as such criteria provide that the Project be substantially owner-occupied, leasing of a Unit or Units shall be prohibited, except in accordance with this Declaration.

The Management Committee shall be empowered to allow up to twenty (20%) percent of the Residential Units in the Project to be leased to, or occupied by nonowner residents. Any Owner who intends to lease his Residential Unit shall submit a written application to the Management Committee requesting permission to do so, which consent shall not be unreasonably withheld so long as at least eighty (80%) percent of the Residential Units in the Project are owner occupied. No Residential Unit may be leased without the prior written consent of the Management Committee .

Residential Units may be rented only in their entirety and no fraction or portion thereof may be rented. No transient, short-term, vacation, seasonal, hotel, executive or other

similar uses are permitted. All rentals or leases must be in writing and for an initial term of not less than one (1) year.

b. Leasing Rules and Regulations. All leases shall be subject to these Covenants, Conditions and Restrictions. The Management Committee shall have the power to make and enforce reasonable rules and regulations for leases and to fine. Any lease or related transaction which does not comply with this section shall be voidable at the option of the Management Committee.

c. Grandfather Clause. Anything to the contrary notwithstanding, the foregoing restrictions, allowing only twenty (20%) percent of the Residential Units to be leased, shall not apply to Residential Unit 702 (the "Grandfathered Unit") which may continue to be leased with restriction for so long as record title and the Grandfathered Unit remains vested in the name of the current Owner. Upon any conveyance of the lease or beneficial title to the Grandfathered Unit (except as security for a loan), the Grandfathered Unit will become subject to the restrictions on leasing contained in this paragraph 8.

d. Miscellaneous Provisions. All lessees, their family members, guests, visitors and invitees, shall abide by the Act, Declaration, By Laws, and Rules and Regulations. Activities or behavior which bothers, annoys or disturbs other residents or interferes with their right to the quiet enjoyment of the premises will not be permitted. The Management Committee may recover from the Owner or the lessee, at the sole discretion of the Management Committee, all costs, including reasonable attorney's fees, incurred in construing or enforcing this section, regardless of whether suit is filed.

e. First Mortgagee's or Lender's Rights. Notwithstanding anything to the contrary herein contained, the provisions of this Section shall not apply to impair the rights of any Mortgagee to:

- i. foreclose or take title to a Unit pursuant to remedies contained in any Mortgage;
- ii. take a deed or assignment in lieu of foreclosure; or
- iii. sell, lease or otherwise dispose of a Unit acquired by the Mortgagee.

9. Condition and Maintenance of Units and Limited Common Areas. Each Unit shall be maintained by its Owner so as not to detract from the appearance of the Project or adversely affect the value or use of any other Unit or other portions of the Project. Each Unit Owner shall keep his or her Limited Common Areas, including but not limited to the patio, porch, balcony and deck, in a clean and orderly condition, free from clutter and debris.

10. Liability of Owners and Occupants for Damages. Each Owner or Occupant shall be liable to the Association or other Owners or Occupants for damages to person or property at the Project caused by his or her negligence or breach of these Covenants, Conditions and Restrictions.

11. Encroachments. In the event that any portion of Common Area, Limited Common Area, Unit or Building encroaches or comes to encroach on other Common Area or Limited Common Area of another Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

12. Establishment and General Authority of Management Committee. The Association's affairs shall be managed by a five (5) member Management Committee. The Management Committee shall be selected by a majority of the Undivided Ownership Interests, and shall have the powers specified in the bylaws of the Association. The Management Committee may delegate its duties to a professional manager subject to any restrictions in the bylaws, *provided that* any professional manager so engaged shall be an independent contractor and not an employee of the Association, and the Management Committee shall set forth the scope and extent of the professional manager's agency in a written management contract.

13. Professional Management. Unless approval for self management is obtained pursuant to the requirements of this Declaration, the Management Committee shall delegate and carry out through a professional manager those of its functions which may be delegated. The professional manager so engaged shall be an independent contractor and not an employee. The nature, scope and extent of his or her agency and duties shall be set forth in a written management contract. The professional manager shall be responsible for operating and managing the Project for the benefit of the Management Committee and the Unit Owners, and shall, to the extent permitted by law and by the terms of the Agreement with the Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.

a. Any contract for professional management shall be for a term not greater than one year and shall provide that either party, with or without cause and without payment of any termination fee or being subject to any penalty, may terminate the contract upon at least sixty (60) days written notice to the other party thereto.

b. In addition, the Management Committee shall have the right to terminate any Managing Agent at any time for Cause without prior notice and without penalty or termination fee. As used in this paragraph, "Cause" means embezzlement or other illegal act with respect to the Association's funds; breach of fiduciary duties owed to the Management Committee or the Association; physical and/or mental incapacity to perform required job functions; scandalous, grossly immoral, felonious or improper professional conduct including without limitations, abuse of so-called "controlled substances."

c. Anything to the contrary notwithstanding, the Association or Committee may employ maintenance and clerical personnel as necessary to properly maintain and operate the Condominium, in addition to, or the place of, a professional manager.

14. Committee Officers and Agents. The Management Committee shall perform its functions through officers elected by the Committee, pursuant to the Bylaws adopted pursuant to this Declaration, and through such agents and employees as the Committee deems in the best interest

of the Association. The Committee may establish sub-committees from time to time.

15. Owners' Meetings. The annual meeting of Unit Owners will be held at 900 South Donner Way in Salt Lake City, Utah during the third week of December each year, for the purpose of outlining the previous year's progress, approving the next year's budget, and electing new Management Committee members. Only Unit Owners may vote. Notice of the annual meeting will be given as specified in the bylaws. Special meetings of the owners may be called between annual meetings, as specified in the bylaws.

16. Lists of Unit Owners, Eligible Mortgagees, and Eligible Insurers of Guarantors.

a. The Management Committee shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Unit or Units such person owns (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Units encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an Eligible Insurer, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity.

b. The Management Committee shall produce an updated list of all Unit Owners and their respective undivided ownership interests, calculated pursuant to Art. III, §3, each year between November 1 and the date which is ten days before the annual owners meeting.

c. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Management Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Management Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Management Committee may act and rely on current ownership information respecting any Unit or Units which it obtains from the office of the Country Recorder of Salt Lake County, Utah. The address of any Owner shall be deemed to be the address of the Unit owned by such person unless the Management Committee is otherwise advised.

17. Capital Improvements. All capital improvements to the Project shall be performed by licensed contractors pursuant to a written agreement. Capital improvements which cost \$15,000.00 or less may be authorized by the Management Committee alone. Capital improvements the cost of which will exceed such amount must, prior to entering into any agreement for such work or the commencement of construction, be authorized by at least a majority of the percentage of the undivided ownership interests in the Common Areas. Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to entering into any agreement for such work or the commencement of construction, be authorized by at least sixty-seven percent of the undivided ownership interests in the Common Areas.

18. Operation and Maintenance. The Management Committee shall pay for or provide for the payment of all utility services furnished to the Project which are not separately metered and billed to individual Units by the provider. The Management Committee shall provide for such maintenance and operation of the Common Areas and Limited Common Areas as may be reasonably necessary to make them usable, clean, functional, attractive, in good condition and repair, and to keep their appearance consistent with community standards.

19. Payment of Common Area Expenses. Each Unit Owner shall pay his or her Common Area Fees subject to the following:

- a. Purpose of Common Area Fees. The Common Area Fees this Declaration establishes shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of Units and maintaining of the Association's property, all as may be more specifically authorized from time to time by the Management Committee.
- b. Creation of Common Area Fees. Common Area Fees are hereby created to pay for the common expenses as may be from time to time specifically authorized by the Management Committee. Each Owner of any Unit, by acceptance of a deed therefore, whether or not expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Common Area Fees assessed against such Unit.
- c. Budget. Before the annual Unit Owners meeting each year, the Management Committee shall prepare a budget which shall set forth an itemization of the anticipated common expenses for the twelve month calendar year, commencing the following January 1. The budget shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses connected with the maintenance and operation of the Common Areas. The budget shall include estimates of expenses of Management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Management Committee is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.
- d. Apportionment. The total of such common expenses shall be apportioned among all the Residential Units on the basis of their respective appurtenant percentages of undivided ownership interest in the Common Areas, calculated pursuant to Section 3 above.
- e. Approval of Budget and Assessments. The proposed Budget and the Common Area Fees shall become effective unless disapproved at the annual meeting by a vote of at least a

majority of the percentage of undivided ownership interest. Notwithstanding the foregoing, however, if the membership disapproves the proposed Budget and Common Area Fees or the Management Committee fails for any reason to establish the Budget and Common Area Fees for the succeeding year, then and until such time as a new Budget and new Common Area Fee schedule shall have been established, the Budget and Common Area Fees in effect for the then current year shall continue for the succeeding year.

f. Payment of Common Area Fees. Unless the obligation to pay Common Area Fees is otherwise accelerated pursuant to this Declaration, prior to the first day of each month, each Owner shall pay to the Management Committee as his or her share of the common expenses one-twelfth of the annual amount apportioned to his or her Unit.

g. Owners Liable to Pay Common Area Fees. For purposes of this Section, the term "Owner" shall mean and refer to the Owner of the legal and equitable interest in the Unit, including but not limited to the vested Owner, the Owner of record, and both the Buyer and Seller under any land sales contract, uniform real estate contract, or other similar instrument, all of whom shall be jointly and severally liable to pay Common Area Fees.

h. Equitable Changes. If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Management Committee may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty days written notice of any changes.

i. Time and Manner of Payments. The details of the time and manner of payment of Common Area Fees shall be determined by the Management Committee, pursuant to the Association's Bylaws.

j. Sinking Fund Account. The Management Committee shall establish and maintain an adequate sinking fund account to pay for unexpected operating expenses and capital improvements. The sinking fund account shall be funded out of regular Common Area Fees. The Management Committee shall create and maintain a table that reflects all items for which it has created a sinking fund reserve, the quantity of the item, the estimated useful life of the item, the estimated current replacement cost of the item, and the annual amount of reserve for that item. In a multiyear budget format, there should be a schedule of reserve drawdowns that track the projected useful life figures derived from the table discussed above.

The sinking fund account should be established to cover the unexpected, and shall be between two and five percent of the total expenses each year.

k. Personal Obligation of Owners. The Owners of each Unit are jointly and severally liable to pay all Common Area Fees assessed against such a Unit, together with all accrued interest, late fees and collection costs, including attorneys fees. Provided, however, no mortgagee or beneficiary under a deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Unit

pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Common Area Fees which accrued prior to the acquisition of title.

l. Acceleration. The Management Committee, at its option and in its sole discretion, may elect to accelerate the entire annual Common Area Fees for any delinquent Unit Owner, as set forth in the Bylaws. After acceleration, if an Owner subsequently files bankruptcy or the Management Committee otherwise decides acceleration is not in its best interest, the Management Committee, at its option and in its sole discretion, may elect to de-accelerate the obligation.

m. Statement of Common Area Fees Due. Upon written request, the Management Committee shall furnish to any Owner a statement of Common Area Fees due, if any, on his or her Units. The Association may require the advance payment of a processing fee not to exceed Fifteen Dollars for the issuance of a statement of Common Area Fees due. Failure of the Management Committee to provide the statement within ten days after receipt of the written request and processing fee, shall be deemed conclusive evidence that all Common Area Fees are paid current on the Units.

n. Superiority of Common Area Fees to Homestead Exemption. All Common Area Fees and liens created to secure the obligation to pay Common Area Fees are superior to any homestead exemptions to which an Owner may be entitled.

o. Termination of Utility Service or Right to Use Amenities for Non-Payment. The Management Committee, in its discretion, may terminate the utility service to any Owner or Occupant of any Unit if such service is paid for by Common Area Fees, or terminate the right to use the recreational facilities or amenities if the Owner or Occupant is in arrears on his or her obligation to pay Common Area Fees and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten days.

p. Suspension of Right to Vote for Non-Payment or Non-Compliance. The right of an Owner to vote on issues concerning the Association shall be suspended if the Owner (i) fails to comply fully with all of the terms, covenants, and conditions of the Act, Declaration, By-Laws, Rules and Regulations, or (ii) is delinquent in the payment of his or her Common Area Fees, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten days.

20. Special Assessments. In addition to the other Common Area Fees authorized by this Declaration, the Management Committee may levy special assessments in any year. So long as the special assessment does not exceed Five Hundred and 00/100s Dollars (\$500.00) per Unit in any one fiscal year, the Management Committee may impose the special assessment without additional approval from the members of the Association. Any special assessment which would exceed this allocation shall be effective only if approved by at least fifty-one percent (51%) of the undivided ownership interest in the Common Areas. The Management Committee in its discretion may allow any special assessment to be paid in installments.

21. Specific Assessments. In addition to the Common Area Fees and special assessments applicable to all Owners, the Management Committee may assess fewer than all Owners for expenses relating to maintenance or improvements that benefit only those Owners (a "specific assessment"), in proportion to the benefit received. The Management Committee's exercise its discretion pursuant to this Section shall not be grounds for any action against the Association or the Management Committee, and shall not require any particular action by the Management Committee in the future with respect to any expenses. The Management Committee may not make a specific assessment for any item of maintenance or repair that this Declaration makes a responsibility of the Association, including improvements and maintenance of Common Areas used by all residents and Owners (such as the Lobby, and entrance halls from the garage to the building).

22. Collection of Common Area Fees. It is important that all Unit Owners pay their Common Area Fees in a timely manner.

a. Procedure. In pursuing the collection of delinquent accounts, the Management Committee shall follow these guidelines and policies:

i. Delinquent Fees. Any Common Area Fees which are not paid when due are delinquent and a lien attaches automatically, regardless of whether a notice is recorded.

ii. Late Fees. If any portion of an Owner's Common Area Fees remains delinquent for a period of more than ten(10) days past the due date, the Management Committee may assess a late charge against such Owner or Owners in an amount the Management Committee may from time to time determine, but in no event less than ten percent (10%) of the late payment. In addition to any late fee, the Management Committee shall charge interest at the rate of 1.5% per month on all Common Area Fees not paid in the full within ten days of their due date.

iii. Notice of Delinquency. The Management Committee may give a notice of delinquency to any Owner who has not paid within twenty days following the due date.

iv. Notice of Lien. If the Common Area Fees are not paid within sixty days of the due date, a notice of lien covering the unpaid Fees, late charges, accrued interest, attorney's fees, the cost of a foreclosure report, and any other collection costs permitted by law shall be filed with the Salt lake County Recorder. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners.

v. Foreclosure of Lien and/or Collection Action. If the Common Area Fees remain unpaid after ninety days from the due date, the Association may, as determined by the Management Committee, institute suit to collect the amounts due and/or to foreclose the lien.

b. Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

c. No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Common Area Fees provided for in this Declaration, by the non-use of Common Areas, Recreational Facilities or the abandonment of the Unit, or other act or inaction.

d. Duty to Pay Independent. No reduction or abatement of Common Area Fees shall be claimed or allowed by reason of any alleged failure of the Association or Management Committee to take some action or perform some function required to be taken or performed by the Association or Management Committee under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Common Area Fees being a separate and independent covenant on the part of each Owner.

e. Application of Payments. Unless otherwise determined by the Management Committee, all payments shall be applied as follows:

- i. To costs and attorney's fees;
- ii. To late charges;
- iii. To accruing interest;
- iv. To delinquent Common Area Fees; and
- v. To current Common Area Fees.

f. Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Common Area Fees may be enforced by sale or foreclosure of the Unit Owner's interest therein by the Management Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures of deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Unit Owner shall pay: (a) the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, (b) reasonable attorney's fees, and (c) a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Management Committee may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the Unit.

g. Appointment of Trustee. If the Management Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he or she 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, Section 57-1-23 (1953), as amended. Each Owner hereby transfers in trust to the Trustee all of his or her right, title and interest in and to the real property for the purpose of securing his or her performance of the obligations set forth herein.

23. Liability of the Association, Management Committee and Professional Manager.

a. Tort Liability. Neither the Association nor any member of the Management Committee nor any professional manager employed by the Management Committee nor their agents, representatives and employees (hereafter jointly referred to in this Section as "Management Committee") shall be liable to any Unit Owner or Occupant, their guests or invitees, for any damages, losses, or claims they may suffer arising out of or caused by the Management Committee's mistake of judgment, nonfeasance, misfeasance, inexperience, oversight, negligence, or any other grounds, except for such member's willful misconduct, gross negligence or bad faith. The Unit Owners and Occupants, their guest and invitees, hereby waive any such claims they may have against the Management Committee, now or in the future, known or unknown, and hereby release and forever discharge them from all liability therefore. Notwithstanding the foregoing, the Management Committee shall have the power and authority to institute any lawsuit or other action against any professional manager for malfeasance, gross negligence or intentional tort committed against the Association or any of its property.

b. Contract Liability. No member of the Management Committee shall be personally liable on any authorized contract or agreement entered into on behalf of the Association. The Unit Owners and Occupants, their guest and invitees, hereby waive any such claims they may have against the members of the Management Committee now or in the future, know or unknown, and hereby release and forever discharge them from all liability therefore.

c. Indemnity. Each Unit Owner and Occupant, their guests and invitees, hereby acknowledges that the Management Committee members serve as volunteers, and at the pleasure of the Owners. Therefore, each Owner, for himself and any Occupants, guests and invitees, agree that the members of the Management Committee, the officers of the Association, and any person serving under them on any sub-committee (collectively the "Indemnified Parties"), shall not be liable to any Owner or other person for any damage, loss or liability arising out of or caused by their voluntary participation as such or the management, operation and maintenance of the Project, including but not limited to any claims due to negligence, mistake of judgment, or for any acts or omissions made in good faith. Specifically, but not in limitation of the foregoing, the Owners agree to indemnify and hold the Indemnified Parties harmless from any and all damages, loss or expenses to the extent they are not covered by insurance.

d. Limitation of Liability. The liability of any Unit Owner for damages or indemnity shall be limited to the total liability concerned multiplied by such Owner's undivided percentage of ownership interest in the Common Areas; *provided however*, that where fewer than all Owners are subject to liability for indemnifying the Management Committee, each such Owner will be liable for that part of the total liability equal to the ratio of (i) such Owner's percentage of ownership interest in the Common Areas to (ii) the percentage of ownership interest in the Common Areas of all Owners whose actions gave rise to the liability, claim, demand or action.

24. Association Insurance. The Management Committee, or its duly authorized agent, shall have the authority to and shall obtain the following insurance coverage, subject to the terms, conditions and restrictions set forth below. The cost of all such insurance and bonds shall be included in the Common Area Fees.

a. Casualty Insurance. Blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk insurance is not reasonably available, then at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) per cent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

b. Supplemental Insurance/Units. In addition to casualty insurance on the Common Area, the Management Committee may, but shall not under any circumstances be obligated to, obtain and continue in effect adequate blanket all-risk casualty insurance in such form and amount as the Management Committee deems appropriate, up to one hundred (100%) per cent of the replacement cost of all Units. In the event such insurance is obtained by the Management Committee, the provisions of this Section shall apply to policy provisions, loss adjustment, and all other subjects to which this section applies to insurance on the Common Area. All such supplemental insurance shall be for the full replacement cost and the agent shall provide the Association with a "Certificate of Insurance."

c. Flood Coverage. If the property is or comes to be situated in an area having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), or any successor program, a policy of flood insurance shall be maintained covering the property in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under NFIP for Insurance Property within a designated flood hazard area; or (2) one hundred percent (100%) of current replacement cost of the Insurable Property. Such policy shall be in a form which meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

d. Liability Coverage. Liability insurance with limits of liability for bodily injury and property damage of not less than \$1,000,000.00 per any one occurrence, and \$2,000,000.00 aggregate. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.

e. Errors and Omissions Coverage. All members of the Management Committee shall be covered by directors and officers liability insurance also known as Errors and Omissions coverage.

f. Fidelity Coverage. A separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all employees, agents and non-compensated officers for theft of Association funds, subject to the following:

i. Agents. Where the Management Committee or the Association has delegated some or all of the responsibility for the handling of funds to a professional manager, the Management Committee shall require a bond for the professional manager and each of its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Management Committee or Association.

ii. Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Management Committee's best business judgment, but shall not be less than the greater of

(1) the estimated maximum amount of funds, including reserve funds, in the custody of the Management Committee, the Association, or the Management agent, as the case may be, at any given time during the term of each bond, or

(2) The sum of three (3) months' aggregate assessments on all Condominium Units, plus all reserve funds.

iii. Quality of Coverage. The bonds required shall meet the following additional requirements:

(1) they shall name the Management Committee, the Association, and the Property Manager as obligee;

(2) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense;

(3) The bonds shall provide that they may not be cancelled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Management Committee, each Eligible Mortgage and Eligible Insurer.

g. Requirements and Restrictions. The following terms, restrictions, limitations, requirements and provisions shall apply to all Association insurance coverage:

i. The Insured. The name of the insured under each policy required to be maintained

hereby shall be set forth therein substantially as follows: "OAKCREST GARDENS HOMEOWNERS ASSOCIATION, INC., for the use and benefit of the individual OAKCREST GARDENS Unit Owners" or its equivalent.

ii. Designated Representative. The Management Committee may designate the duties to obtain and maintain insurance to an authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such Trustee, for the use and benefit of the individual Unit Owners.

iii. Beneficiary. In any policy covering the Common Areas or the entire Project, each Unit Owner, Eligible Mortgagee and Eligible Insurer, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided ownership interest in the Common Areas and Facilities.

iv. Certificate of Insurance. Evidence of the Association's insurance shall be issued to each Unit Owner and Eligible Mortgagee upon request.

v. Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be cancelled or substantially modified without at least ten days prior written notice to the Association and to each Eligible Mortgagee.

vi. Miscellaneous Provisions. Each insurance policy shall contain at least the following additional items:

(1) Waiver of Subrogation. A waiver of the right of a subrogation against Unit Owners individually;

(2) Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual Unit Owner.

vii. Deductible. Each policy may contain a reasonable deductible, *provided that*:

(1) Casualty Insurance. In the case of casualty insurance, the amount of any deductible shall be added to the face amounts of the policy in determining whether the insurance at least equals the full replacement cost; and

(2) Payment of Deductible. The deductible shall be the responsibility of and shall be paid by the party who would be liable for the loss, damage, claim or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's loss bears to the total. Provided, however, if the loss to any Unit is caused by an act of God or nature, or by an element beyond the control of the Management Committee, the Association or the Owner, then the Owner shall be responsible

for and shall pay the deductible.

25. Individual Insurance. By virtue of taking title to or possession of a Unit subject to the terms of this Declaration, each Owner and Occupant covenants and agrees with all other Owners, Occupants, and the Association to purchase and maintain that casualty and liability insurance necessary and reasonable to protect his or her Unit, personal belongings, furniture, furnishings and effects. Form 6, its successor, or its substantial equivalent is recommended for Unit Owners and Form 4, its successor, or its substantial equivalent is recommend for Non-Owner Occupants. In addition, each Owner must obtain and keep in force a policy of insurance providing primary coverage of a minimum of \$10,000 against damage to other Units and Common Areas (including Limited Common Areas). Each Owner must provide the Association or Management Committee with a Certificate of Insurance and a notice of any change or termination of Owner's insurance. No Unit Owner shall be entitled to exercise his or her right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Unit Owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the property at any particular time.

- a. Association Insurance Secondary to Individual Insurance. Anything to the contrary notwithstanding, in the event the Unit Owner and the Association have insurance covering the same loss; and any insurance of the Owner will be deemed the primary insurance, and the insurance of the Association shall be deemed secondary insurance.
- b. The Association reserves the right to adjust claims, including, by way of illustration and not limitation, the right to refuse to submit a claim to its insurance carrier and the right, in the event of duplicate coverage, to consider the insurance of an Owner to be the primary insurance and the insurance of the Association to be secondary insurance.
- i. Prompt Repair. Each Unit Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his or her Unit, the Unit Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

26. Other Insurance Requirements

- a. Disbursement of Insurance Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any mortgagee of a Unit, and may be enforced by them.
- b. Special Endorsements. Each policy of insurance required by this Declaration shall also contain or provide the following or their substantial equivalent: (1) "Agreed Amount and Inflation Guard Endorsement", if available; and (2) "Construction Code Endorsements" (such as a "Demolition Cost Endorsement", a "Contingent Liability from Operation of Building Laws Endorsement" and an "Increased Cost of Construction Endorsement"), if

the Project is subject to a construction code provision which would become operative upon Partial or Substantial Destruction and require changes to undamaged portions of the Building(s), thereby imposing significant costs in the event of such Destruction of the Project by an insured peril.

c. Quality of Insurance Carrier. Each insurance policy required hereby shall be written by an insurance carrier licensed to transact business in the State of Utah and with a rating by Best's Key Rating Guide of A- or better.

d. Restrictions on Policies. No such insurance policy shall be maintained where:

i. Individual Assessments Prohibited. Under the term of the carrier's charter, bylaws or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a borrower, a Mortgagee, the Management Committee, the Association of Unit Owners, FNMA, or the designee of FNMA.

ii. Payments Contingent. By the terms of the carrier's charter, bylaws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder or member; or

iii. Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association, a Unit Owner, FNMA, or the borrowers) from collecting insurance proceeds.

iv. Disclaimer. No provision of this Declaration shall be construed to limit the power or authority of the Management Committee or the Association to obtain and maintain insurance coverage in addition to any insurance coverage this Declaration requires, in such amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

27. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project. Each of the following terms shall have the meaning indicated:

a. Destruction. "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent or more of the estimated Restored Value of the Project. "Partial destruction" shall mean any other damage or destruction to the Project or any part thereof.

b. Condemnation. "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is twenty-five percent or more of the estimated Restored

Value of the Project. "Partial Condemnation" shall mean any other such taken by eminent domain or grant or conveyance in lieu thereof.

c. Obsolescence. "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent or more of the estimated Restored Value of the Project. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

d. Restored Value. "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

e. Estimated Cost of Restoration. "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition ("Restoration").

f. Available Funds. "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee of a Condominium Unit for the condemnation or taking of the Unit in which they are interested.

g. Determination by Management Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Management Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent or more of the estimated Restored Value of the Project. In addition, the Management Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Management Committee may retain and rely upon one or more qualified appraisers or other professionals.

h. Restoration of the Project. Restoration of the Project shall be undertaken by the Management Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence. The Management Committee shall also undertake restoration in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence unless the Owners collectively holding at least sixty-seven percent of the Project's undivided ownership interest and Eligible Mortgagees holding Mortgages on Units which collectively hold at least fifty-one percent of the undivided ownership interest in the Common Areas and Facilities, consent in writing to the Management Committee's decision not to undertake restoration.

i. Notices of Destruction or Obsolescence. Within thirty days after the Management Committee has determined that Substantial Destruction, Substantial Condemnation, or

Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

j. Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Management Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

k. Inadequate Insurance. In the event the cost of Restoration exceeds Available Funds, all of the Units shall be assessed for the deficiency on the basis of their respective percentages of undivided ownership interest in the Common Areas.

l. Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units.

m. Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, condominium ownership under this Declaration and the Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Management Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Condominium Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

n. Authority of Management Committee to Represent Owners in Condemnation or to Restore or Sell. The Management Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Unit Owners and their mortgagees as their interests may appear.

The Management Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as herein above provided.

Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

28. Consent in Lieu of Vote. In any case in which the Act or this Declaration requires the vote of a Unit Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, the written consent or approval of each required Unit Owner authorizing the act or transaction, subject to the following conditions:

- a. Ninety Day Limit. All necessary consents must be obtained prior to the expiration of ninety days from the time the first written consent is obtained; and
- b. Change in Ownership. Any change in ownership of a Condominium Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

29. Mortgagee Protection. The lien or claim against a unit for unpaid Common Area Fees levied by the Management Committee or by the Association of Unit Owners pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such Common Area Fees became due.

- a. Statutes. In the event that the State of Utah should enact the Uniform Condominium Act or any other statute applicable to condominiums with a provision that would allow such Common Area Fees, including special assessments, to have a limited priority over a Mortgage recorded before such Common Area Fees became due, or in the event that the State of Utah should enact any law which would allow a lien for unpaid Common Area Fees to survive foreclosure or exercise of a power of sale, all such assessments and charges, including special assessments, shall after the date of such enactment be made due and payable to the Management Committee or the Association on a monthly basis and the lien for any fees, late charges the Association assessed in connection with such unpaid Common Area Fees shall be deemed subordinate to the first Mortgage in the Unit upon which such Common Area Fees are levied.
- b. Effects of Voluntary and Involuntary Sale. The lien or claim against a Unit for such unpaid Common Area Fees shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Common Area fees which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit from the lien of any Common Area Fees becoming due thereafter.
- c. Books and Records Available for Inspection. The Management Committee or the Association shall make available to Unit Owners, to lenders and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration and rules concerning the

Projects, and the books, records, and financial statements of the Management Committee and the Association. "Available", as used in the Paragraph, shall mean available for inspection upon request during normal business hours or under other reasonable circumstances.

d. Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year free of charge to the party so requesting. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

e. Management Contracts. Any agreement for professional management of the Condominium Project and any contract or lease which is entered into by the Management Committee or the Association shall provide that either party may terminate the contract for cause upon at least sixty days written notice to the other party thereto.

f. Eligible Mortgagee Designation. Upon written request to the Management Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit Number or address of the Unit encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder, insurer or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

i. Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor.

ii. Delinquency. Any delinquency in the payment of Common Area Fees owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

iii. Lapse of Insurance. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Management Committee of the Association.

iv. Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

g. No Right of First Refusal. The right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restriction.

30. Amendment. The affirmative vote of at least sixty-seven percent of the undivided ownership

interest in the Common Areas shall be required and shall be sufficient to amend the Declaration or the Map, *provided that* Exhibit A may be amended from time to time without the approval of sixty-seven percent of the undivided ownership interest, for the sole purpose of recording any transfer of a Parking Unit or Storage Unit between Residential Unit Owners. Such change may be made solely on the consent of the Management Committee and the consent of the affected Unit Owners. Any authorized amendment shall be accomplished through the recordation of an instrument executed by an authorized representative of the Management Committee. In such instrument the Management Committee shall certify that the vote required by this Section for amendment has occurred, and if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

a. Consent of Eligible Mortgagee. The consent of at least sixty-seven percent of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project; and the consent of at least fifty-one percent of the Eligible Mortgagees shall be required to add to or amend any material provision of this Declaration or the Map which establishes, provides for, governs, or regulates any of the following:

- i. voting;
- ii. assessments, assessment liens, or subordination of liens;
- iii. reserves for maintenance, repair, and replacement of the Common Areas;
- iv. insurance or fidelity bonds;
- v. limitations and restrictions on the right to use of the Common Areas;
- vi. responsibility for maintenance and repair of the several portions of the Project;
- vii. expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- viii. the boundaries of any Unit;
- ix. the percentage of ownership interest in the Common Areas;
- x. convertability of Units into Common Areas or of Common Areas into Units;
- xi. leasing of Condominium Units;
- xii. imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Condominium Unit;
- xiii. express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible

Insurers; and

xiv. the requirement that the Project be professionally managed rather than self managed.

b. Any addition or amendment shall not be considered material for purposes of this Paragraph (a) if it is for clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Map is required shall be mailed postage prepaid to the address for such Eligible Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Management Committee or the Association a negative response to the notice of the proposed amendment within thirty days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Map or the termination of the legal status of the Project as a condominium if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

31. Interpretation. To the extent the provisions of the Act are consistent with this Declaration, those provisions are incorporated in this Declaration and shall supplement its terms. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

32. Covenants to Run the Land. This Declaration its provisions constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or Occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring such interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

33. Enforcement and Right to Recover Attorney's Fees. If an Owner or Occupant, their families, guests or invitees shall, at any time, violate any term, covenant, or condition of this Declaration, the By-Laws, any administrative rule or regulation, or the Act, resulting in the Management Committee taking steps to enforce the same, or to pursue any remedy provided to it in this Declaration, the By-Laws or any applicable law, regardless of whether a lawsuit is commenced, the Owner or Occupant shall reimburse the Management Committee for all costs and expenses,

including but not limited to a reasonable attorney's fee, necessitated by its breach or violation. To secure payment of any unpaid costs or fees, the Management Committee shall have the right and power to file a lien against the Unit owned or occupied, and may proceed to collect the unpaid costs and fees the same as if it were unpaid common area fees. In the event of a breach or anticipated breach by an Owner or Occupant, their family, guests or invitees, of any of the terms, covenants or conditions of these By-Laws, the Management Committee shall have, in addition to any other remedies provided by law or equity, the right to injunctive relief and damages.

34. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. Neither the Association, nor the Management Committee shall in any way be considered insurers or guarantors of security within the Project, however, and neither the Association nor the Management Committee shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and Occupants, their guests and invitees, as applicable, acknowledge that the Management Committee and the Association make no representation or warranty that any fire protection system or burglar alarm system designated by or installed according to guidelines established by the Management Committee or the Association cannot be compromised or circumvented, that any fire protection or burglar alarm system will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise, nor that the fire protection or burglar alarm systems will in all cases provide the detection or protection for which the system is designed or intended. All Owners and Occupants, their guests and invitees, acknowledge and understand that the Association and Management Committee are not insurers of their safety and they hereby assume all risks for loss or damage to their person or property and further acknowledge that the Association and Management Committee have made no representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

35. Liens Against the Association. All liens for materials, labor or money judgments against the Association or Management Committee are to be indexed in the public records under the name of the Association and the name of the community. An Owner may pay the pro rata share of the amount of any lien against the Association or Management Committee and that shall be sufficient to release the lien on his or her Unit. Such liens will not constitute a lien on the Common Areas of the community, but rather on each Unit within the community. Any person or entity who elects to perform labor or provide materials at this Project shall do so subject to the terms of this Section. If the Association has encumbered the Common Areas and thereafter defaults on its obligations, the lienholder must exercise its rights against the Common Areas before it may proceed against the Units or the Unit Owners.

36. Agent for Service of Process. The President of the Association is the person to receive service of process in the cases authorized by the Act and the office of the registered agent is 900 South Donner Way, Salt Lake City, UT 84108.

37. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Map shall take effect upon its being filed for record in the Office of the County Recorder of Salt Lake City, Utah.

38. Request for Notice. The Association hereby requests that a copy of any notice of default and a copy of notice of sale under any mortgages or deeds of trust filed for record against any Units at OAKCREST GARDENS be mailed to the OAKCREST GARDENS Homeowner's Association at 900 South Donner Way, Salt Lake City, UT 84108 pursuant to UCA Section 57-1-26 (1953), as amended. For purposes of satisfying the requirements of the foregoing Section, this request shall be deemed to be repeated re-recorded after the recordation of each mortgage, trust deed, or security interest hereafter recorded in the office of the County Recorder of Salt Lake County, Utah affecting any Unit at OAKCREST GARDENS.

[Signature page follows.]

THIS DECLARATION IS EXECUTED this 5 day of December, 2007.

OAKCREST GARDENS HOMEOWNER'S ASSOCIATION, INC.

Mary Lou Bentley, President
Name and Title:

Peggy L. Howell
Name and Title:

Martha P. Felt V. Pres.
Name and Title:

Cynthia Snow Secretary
Name and Title:

Helen Vitale
Name and Title:

STATE OF UTAH)
 : ss.
COUNTY OF Salt Lake)

On the 5 day of Dec, 2007, personally appeared before me Mary Lou Bentley, Peggy L. Howell, Martha P. Felt, Cynthia Snow, and Helen Vitale whose identity is known to me, or sufficiently proven to me, and being duly sworn did say that they are the members of the Management Committee of the Oakcrest Gardens Homeowners Association, Inc., and that they signed the foregoing Second Amended and Restated Declaration of Condominium on behalf of such Association by authority given them in the said Declaration.

Richard Baese
NOTARY PUBLIC

My Commission Expires: 3-16-2010 Residing in: SALT LAKE

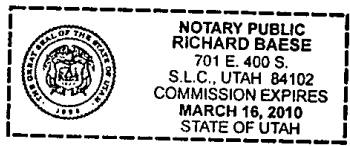


EXHIBIT A
to the
Second Amended and restated Declaration of Condominium
of the
Oakcrest Gardens Condominium Project

Unit No.	Square Feet of Floor Space Within Unit	Parking Stall No.	Storage Unit No.	Percentage Of Ownership
101	2140	11,23	UU,109-7	2.448
102	1485	41,42	X	1.739
103	1485	68,69	VV	1.739
104	2165	6, 89	B	2.418
105	965	27	PP	1.119
106	865	22,56	P,O,ZZ	1.229
107	865	82	QQ	1.019
108	965	33	V	1.119
201	2665	19,20,21	KK	3.017
202	1825	35,36	S,110-1	2.133
203	1545	15,29	RR,109-1	1.853
204	1825	5	U	1.978
205	900	34	SS	1.054
206	500	1	R	0.654
301	2425	66,67	YY	2.678
302	1825	80,81	F	2.078
303	1825	58,59	OO	2.078
304	2425	50,51	Q	2.678
305	900	75	109-2,5,6	1.164
401	1825	13,14	CC	1.078
402	1825	37,38	D,110-3	2.133
403	1825	25,26	LL	2.078
404	1825	52,53	Y	2.078
405	1220	24	WW	1.374
406	1825	44,45	A,110-6	2.133
407	2215	31,32	TT	2.468
408	1600	57	E	1.754
501	1825	12,16	XX	2.078
502	1825	4,48	N	2.078
503	1825	60,61	EE	2.078
504	1825	43,47	Z	2.078
505	1825	72,74	DD,109-4,8	2.188
506	1825	2, 3	C	2.078
507	1825	30	FF	1.978
508	1825	76,77	L	2.078

Unit No.	Square Feet Floor Space Within Unit	Parking Stall No.	Storage Unit No	Percentage Ownership
601	2165	63,64	BB	2.418
602	1825	7-8	T	2.078
603	1485	17	NN	1.639
604	1825	86,87	W-110-5	2.133
605	1825	65,62	MM	2.078
606	1825	46-88	K	2.078
607	1825	18,54	AA	2.078
608	1825	84,85	M	0.2.078
701	1485	70	JJ,109-3	1.694
702	1825	78,79	G	2.078
703	2165	73	GG	2.318
704	1825	39,40	H,110-2	2.133
705	1825	55	II	1.978
706	1825	49,83	I,110-4	2.133
707	1825	71,28	HH	1.078
708	1825	9,10	J	2.078

EXHIBIT B
to the
Second Amended and restated Declaration of Condominium
of the
Oakcrest Gardens Condominium Project

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT 3, AMENDED PLAT OF OAK HILLS PLAT "L", A SUBDIVISION OF PART OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE N 65° 25' 26" W 115.35 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT (RADIUS 57.00 FEET, BEARING N 26° 34' 34" E) 92.34 FEET; THENCE N 29° 23' 59" E 249.88 FEET TO THE SOUTHERLY LINE OF A 100 FOOT DIAMETER CUL-DE-SAC, THE CENTER OF WHICH BEARS N 29° 23' 59" E 50.00 FEET.

D. SUBJECT TO AN EASEMENT TWENTY FEET WIDE, TEN FEET THEREOF LOCATED UPON THE PREMISES HEREINAFORE FIRST DESCRIBED AND TEN FEET THEREOF LOCATED UPON THE ADJOINING PREMISES, FOR THE INSTALLATION AND CONTINUED MAINTENANCE, REPAIR, RECONSTRUCTION AND REMOVAL OF UNDERGROUND TELEPHONE AND ELECTRIC POWER CIRCUITS, SANITARY SEWER, STORM AND DRAIN SEWER, HOT WATER, CHILLED WATER, STEAM AND GAS, WATER MAINS, SNOW MELTING SYSTEMS, ALL TO BE CONTAINED IN DUCTS AND PIPES BELOW THE SURFACE OF THE LAND, WITHIN SAID TWENTY-FOOT STRIP OF LAND BEING TEN FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE, TO WIT:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT 3, AMENDED PLAT OF OAK HILLS PLAT "L", A SUBDIVISION OF PART OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE N 65° 25' 26" W 115.35 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT (RADIUS 57.00 FEET, BEARING N 26° 34' 34" E) 92.34 FEET; THENCE N 29° 23' 59" E 249.88 FEET TO THE SOUTHERLY LINE OF A 100 FOOT DIAMETER CUL-DE-SAC, THE CENTER OF WHICH BEARS N 29° 23' 59" E 50.00 FEET.

E. TOGETHER WITH AN EASEMENT FOR THE INSTALLATION AND MAINTENANCE OF A RETAINING WALL PRESENTLY CONSTRUCTED AND LOCATED ALONG THE WESTERLY LINE OF THE ABOVE DESCRIBED 20-FOOT RIGHT OF WAY, THE WESTERLY FACE OF SAID WALL BEING CONTIGUOUS WITH THE WESTERLY LINE AND RIGHT OF WAY, TOGETHER WITH A PERPETUAL EASEMENT FOR THE INSTALLATION AND MAINTENANCE OF THE NECESSARY FOOTINGS FOR SAID RETAINING WALL NOT TO EXCEED A WIDTH OF FOUR FEET SIX INCHES BEYOND THE WESTERLY FACE OF SAID WALL AND THE RIGHT OF INGRESS AND EGRESS FOR REASONABLE AND NECESSARY MAINTENANCE AND REPAIR OF SAID RETAINING WALL AND FOOTING

EXHIBIT "B"

Legal Description

<u>Unit No.</u>	<u>Parcel No.</u>
101	16-11-255-002
102	16-11-255-003
103	16-11-255-004
104	16-11-255-005
105	16-11-255-006
106	16-11-255-007
107	16-11-255-008
108	16-11-255-009
201	16-11-255-012
202	16-11-255-013
203	16-11-255-014
204	16-11-255-015
205	16-11-255-016
206	16-11-255-017
301	16-11-255-018
302	16-11-255-019
303	16-11-255-020
304	16-11-255-021
305	16-11-255-022
401	16-11-255-023
402	16-11-255-024
403	16-11-255-025
404	16-11-255-026
405	16-11-255-027
406	16-11-255-028
407	16-11-255-029
408	16-11-255-030
501	16-11-255-031
502	16-11-255-032
503	16-11-255-033
504	16-11-255-034
505	16-11-255-035
506	16-11-255-036
507	16-11-255-037
508	16-11-255-038
601	16-11-255-039
602	16-11-255-040
603	16-11-255-041
604	16-11-255-042

<u>Unit No.</u>	<u>Parcel No.</u>
605	16-11-255-043
606	16-11-255-044
607	16-11-255-045
608	16-11-255-046
701	16-11-255-047
702	16-11-255-048
703	16-11-255-049
704	16-11-255-050
705	16-11-255-051
706	16-11-255-052
707	16-11-255-053
708	16-11-255-054

EXHIBIT C

BY-LAWS

OF

OAKCREST GARDENS CONDOMINIUM PROJECT

ARTICLE I

PLAN OF UNIT OWNERSHIP AND INCORPORATION

1. Submission. These By-Laws are referred to and incorporated by reference in the second Amended and Restated Declaration of Condominium of the OAKCREST GARDENS CONDOMINIUM PROJECT (the "Declaration"), which is located in Salt Lake County, State of Utah. These By-Laws shall govern the administration of the OAKCREST GARDENS Homeowners Association, Inc (the "Association") and shall function and operate as the By-Laws of the incorporated Association.

3. Office and Registered Agent. The Registered Agent of the Association is and shall be the President of the Association, who at the present is Marilyn Bentley. The registered office of the Association and the Registered Agent is 900 South Donner Way, Salt Lake City, Utah 84108.

4. By-Laws Applicability. All present and future Owners, occupants, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted entrance at OAKCREST GARDENS shall be subject to and abide by these By-Laws.

5. Defined Terms. All capitalized terms used in these bylaws but not defined within them shall have the meaning given to such term in the Second Amended and Restated Declaration of Condominium, of which these bylaws are a part.

ARTICLE II

ASSOCIATION

1. Composition. The OAKCREST GARDENS Homeowners Association Inc. is a Utah, not for profit corporation and a mandatory association consisting of all Unit Owners at OAKCREST GARDENS.

2. Voting.

(a) Only Owners of Residential Units may vote. The Owners of a each Residential Unit shall collectively have a number of votes equal to the ratio of the Size of the Owner's Units to the total square footage of all Units in the project (which ratio shall be that Unit's "Percentage Interest"), with the total number of votes equaling 100.

(b) If a Residential Unit has more than one Owner, the Owners shall elect a representative from among them to cast the votes relating to such Unit. The vote cast at any meeting by any of the Owners of a Unit shall be conclusively presumed to be the vote of all multiple Owners and shall bind all multiple Owners unless an objection is immediately made by another Owner of the same Unit. If such an objection is made, then the vote shall not be counted for any purpose other than to determine whether a quorum of Owners exists.

3. Place of Meeting. Meetings of the Association shall be held at 900 Donner Way, Salt Lake City, UT 84108, the principal office of the Project or at such other suitable place as may be designated by the Committee from time to time and stated in the notice of meeting.

4. Annual Meeting. Unless otherwise designated by the Committee, the annual meeting of the Association shall be held in the third week of December of each year, on the date and time designated by the Committee. At the annual meeting, the Committee shall outline key events of the prior year, present for approval by a majority of the Percentage Interests, the following year's budget and nominations for any Committee positions open for election, and such other business any Owner desires to bring before the Association.

5. Special Meetings. The President or a majority of the Committee may call a special meeting of the Association at any time and shall call a special meeting upon receipt of a petition presented to the Secretary of the Committee by Owners signed by not less that twenty-five percent (25%) of the Percentage Interest of the Project. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

6. Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail, by regular US Mail, a notice of:

(a) each annual meeting of the Owners not less than ten (10) and not more than thirty (30) days in advance of such meeting; and

(b) each special meeting of the Owners at least three (3) days and not more than twenty (20) days in advance of such meeting, stating the purpose thereof as well

as the time and place where it is to be held, to each Owner or record, at the address of his or her respective Unit or such other address as each Owner may have designated by in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

(c) Any Owner may waive notice of any meeting by signing a waiver of notice prior to or during the meeting for which notice is waived. Any meeting of Owners may be held without conforming to the notice requirements about if 100% of the Owners sign a waiver of notice for such meeting, or if 100% of the Owners attend such meeting and carry on the business for which the meeting was called without challenging notice.

7. Voting Requirements. The Owner(s) of a Unit shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he/she shall be in full compliance with all of the terms, covenants, and conditions of the Act, Declaration, By-Laws, Rules and Regulations, and shall have fully paid all Common Area Fees and all other amounts such Owner(s) have become liable for, in the manner required by these By-Laws or the Declaration.

8. Proxies. The votes appertaining to any Unit may be cast pursuant to a written proxy or proxies duly executed by or on behalf of the Unit Owner, or, in cases where the Unit Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Unit Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice or if it is not signed by a person having authority at the time of its execution, to execute deeds relating to the Unit(s) for which the proxy is given. Unless it expressly states otherwise, a proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Committee not less than two (2) days before the meeting.

9. Quorum Voting. Except as required by this paragraph, a majority of all Percentage Interests entitled to vote shall constitute a quorum at any meeting of the Association. If such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two (2) days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. The Owners present at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Unit Owners representing a majority of the Percentage Interest in person or by proxy, shall decide any question brought before the meeting. ***Notwithstanding the foregoing***, in any situation where these By-Laws, the Act or Declaration requires the affirmative vote of a greater percentage of ownership interest, than at least that percentage must be present in person or by proxy to constitute a

quorum at any meeting at which such a vote is to be taken.

10. Order of Business. The order of business at all meetings of the Association shall be as follows:

- (a) roll call;
- (b) proof of notice of meeting;
- (c) reading of minutes of preceding meeting;
- (d) reports of officers;
- (e) report of special committees, if any;
- (f) election of inspectors of election, if applicable;
- (g) election of Committee Members, if applicable;
- (h) unfinished business; and
- (i) new business.

11. Conduct of Meeting. The President shall, or in his or her absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as a record of all transactions occurring thereat.

12. Nuisance. At all meetings, the Members and other persons in attendance shall conduct themselves in a civil and appropriate manner and shall not under any circumstances create or maintain a nuisance, in which case they shall be asked to leave.

ARTICLE III

MANAGEMENT COMMITTEE

1. Powers and Duties. The affairs and business of the Association shall be managed by the Management Committee established by the Declaration (the "Committee"). The Committee shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Act and the Declaration and may do all such acts and things necessary to operate and maintain OAKCREST GARDENS. In particular, the Committee shall have, and is hereby granted, the authority and power to do the following things:

(a) Enter Any Unit. The Committee may enter into or upon any Unit to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. This includes the authority to obtain and maintain entry keys to the individual Units and, if the Unit Owner refuses or is unable to make a key available, to have a key to the Unit made.

(b) Grant Easements. The Committee may, without the vote or consent of the

Unit Owners, Mortgagees, insurers or guarantors of Mortgage, or any other person, to grant or create, on such terms as its deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project.

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

(d) Sue and Be Sued. The Committee shall have standing to sue and be sued on behalf of the Association.

(e) Enter Into Contracts. The Committee may enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

(f) Transfer Interests in Real Property. The Committee may convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained.

(g) Purchase and Add Property. The Committee may purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by the necessary vote or consent, and to add any such property to the Project, so long as such action has been authorized by the necessary vote or consent.

(i) Promulgate Rules. The Committee may promulgate such reasonable rules, regulations, and procedures as it deems necessary or desirable to aid it in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration. This includes, but is not limited to the authority to limit services, cut-off privileges, issue sanctions, citations and levy fines, and pursue collection by lien or foreclosure as set forth in the Declaration.

(j) Prepare an Annual Budget. The Committee shall prepare a budget each year of Common Area Fees needed to defray the costs and expenses of the Project, and establish the contribution of each Owner to the Common Area Fees, pursuant to the Declaration. Owners shall pay one-twelfth of their pro rata share of the annual Common Area Fees on or before the first day of each month. If a Unit Owner fails to make an installment payment within fifteen (15) days of its due date, the Committee may declare the entire annual Common Area Fee due from such Owner immediately due and payable without further notice, although the Committee may subsequently elect to de-accelerate the obligation.

(k) Common Areas. The committee shall provide for the operation, care, upkeep, replacement, maintenance, and surveillance of all the Common Areas, facilities and services of the Project.

(l) Personal. The Committee shall hire, retain and terminate the personnel it deems necessary for the servicing, maintenance, operation, repair, and replacement of the Common Areas and Project. The Committee shall establish and pay the compensation of such personnel in the performance of their duties, and purchase or reimburse such personnel for any supplies and equipment shall be deemed the common property of the Owners.

(m) Open Bank Accounts. The Committee shall open and maintain one or more bank account on behalf of the Association and shall designate the signatories required therefor. The Committee shall deposit all payments of Common Area Fees or other amounts it receives into such accounts and use all such accounts for the administration of the Property, pursuant to the Declaration and these By-Laws.

(n) Make Repairs. The Committee shall make repairs, additions and improvements to, or alterations of, the Property; and restoration of, the Property, in accordance with the Declaration and other provisions of these By-Laws, after damage or destruction by fire or other casualty.

(o) Enforcement. The Committee shall enforce by legal means the provisions of the Declaration, these By-Laws, and Rules and Regulations for the use of the Property adopted by it, and bringing any proceedings which may be instituted on behalf of the Owners.

(p) Obtain and Carry Insurance. The Committee shall insure against the risks, casualties and liabilities, as provided in the Declaration and paying the premium costs thereof.

(q) Pay For All Services. The Committee shall pay for all costs and services rendered to the Project and not billed directly to Owners of individual Units.

(r) Bookkeeping and Accounting. The Committee shall keep books and records of the Project with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Project, specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Committee for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon

resolution of the Association, may be audited once a year by an outside auditor employed by the Committee who shall not be a resident of the Project, or an Owner therein. The cost of such audit shall be a common expense. A copy of the annual audit report shall be supplied to any first mortgagee of any Unit in the Project who requests the same in writing from the Secretary.

(s) Utilities. The Committee shall provide water, waste removal, gas, electricity, telephone, cable t.v., and other necessary utility services for the Common Areas and such services to the Units, including but not limited to heating, as are not separately metered or charged to the Unit Owners thereof.

(t) Landscaping. The Committee shall provide landscaping gardening, snow removal, painting, cleaning, maintenance, decorating, repair and replacement of the Common Areas.

(u) Discharge Liens. The Committee shall pay any amount necessary to discharge any mechanic's or materialmen's lien or other encumbrance levied against the Property, or any part thereof, which may in the opinion of the Committee constitute a lien against the Property or against the Common Areas, rather than merely against the particular Unit. When one or more Unit Owners are responsible for the existence of such a lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Committee by reason of said lien or liens shall be specially assessed to said Unit Owners and shall, until paid by said Unit Owners, constitute a lien on the interest of said Unit Owners in the Property which lien may be perfected and foreclosed in the manner provided in the Declaration.

(v) Levy Fines. The Committee may levy fines, make sanctions and issue citations wherever and whenever necessary or appropriate for violations of the Declaration, By-Laws, or Rules and Regulations, and make collection by lien or foreclosure as provide in the Declaration.

(w) Make Emergency Repairs. The Committee may make emergency repairs and charge the cost of such repairs to the Unit Owner or Unit Owners as appropriate.

(x) Removal of Vehicles. At the expense of the Owner or Occupant, the Committee may arrange for the towing or removal of any motor vehicle parked or standing in an unauthorized area.

(y) Eviction. The Committee may evict any non-owner Occupant in material violation of the Declaration, By-Laws or Rules and Regulations.

(z) In addition, the Committee may take such other actions and do such things

as it deems necessary to accomplish the foregoing that are not inconsistent with the Act, the Declaration, or the By-Laws, and to do anything pursuant to a proper resolution of the Management Committee or Association.

2. Composition of Management Committee. The Management Committee shall be composed of five members. Only Owners and officers or agents of Owners other than individuals shall be eligible for Committee Membership.
3. Election and Term of Office of the Committee. The Owners shall elect Committee Members at the annual meeting. Each Committee member so elected shall serve for a two year term. The term of office of membership on the Committee shall be two (2) years. At the expiration of the member's term, a successor shall be elected.
4. Organization Meeting. The first meeting of the members of the Committee shall be immediately following the first annual meeting of the Association.
5. Regular Meetings. Regular meetings of the Committee shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Committee.
6. Special Meetings. Special meetings of the Committee may be called by the President, Vice-President or a majority of the Committee members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by mail or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Committee shall be valid for any and all purposes.
7. Waiver of Notice. Before or at any meeting of the Committee, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Committee shall constitute a waiver of notice. If all the members are present at any meeting of the Committee, no notice shall be required and any business may be transacted at such meeting.
8. Committee's Quorum. At all meetings of the Committee, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all Committee members present at a meeting at which a quorum is present shall be deemed to be the acts of the Committee. If, at any meeting of the Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time, but for no longer than two (2) days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.
9. Vacancies. Vacancies on the Committee caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Committee at a special meeting of the Committee held for that purpose promptly

after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Committee; and each person so elected shall be a member for the remainder of the term of the member so replaced or until a successor is elected at the next annual meeting of the Association. A vacancy created by the removal of a member by a vote of the Association shall be filled by vote of the Association as provided below.

10. Removal of Committee Member. A member may be removed with or without cause, and his or her successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Percentage Interests is present, by an affirmative vote of a majority of the Percentage Interests. Any member whose removal has been proposed by the Owners shall be given at least thirty days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting.

Any Committee Member who misses sixty percent (60%) or more of the Committee Meetings or who misses three consecutive meetings, in any calendar year, shall be automatically removed from the Committee.

11. Conduct of Meetings. The President shall preside over all meetings of the Committee and the Secretary shall keep a Minute Book and record in it the minutes of all Committee meetings, all resolutions adopted by the Committee, and all transactions and proceedings occurring at such meetings. The Committee shall have the authority to establish its own procedures, policies and guidelines for the conduct of its meetings, including but not limited to the power to plan its agendas, establish an open meeting time for members of the Association at large, exclude non-members of the Committee, or prohibit electronic audio or video recording of meetings.

12. Report of Committee. The Committee shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

ARTICLE IV

OFFICERS

1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Committee. The Committee may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Committee. Two or more offices may be held by the same person, except that the President shall not hold any other office.

2. Election of Officers. The officers of the Association shall be elected annually by the Committee at each annual meeting of the Committee. Officers shall hold office at the pleasure of the Committee. Any vacancy in an office shall be filled by the Committee at the next

regular meeting, or a special meeting called for such purpose.

3. Removal of Officers. The officers shall hold office until removed, or until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Committee may be removed at any time by the affirmative vote of a majority of the Committee, and his or her successor may be elected at any regular meeting of the Committee, or at any special meeting of the Committee called for such purpose.

4. President. The President shall be the chief executive officer of the Association; he or she shall preside at meetings of the Association and the Committee and shall be an ex officio member of all committees; he or she shall have general and active management of the business of the Committee and shall see that all orders and resolutions of the Committee are carried into effect. He or she shall have all of the general powers and duties which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.

The President shall execute all documents and instruments duly authorized by these Bylaws, the Declaration or the vote of the Owners or Committee. The President's signature shall bind the Committee or the Association, unless the Declaration specifically requires additional signatures. The President may delegate signing authority in specific instances to another Member of the Committee, unless such delegation is specifically prohibited by the Declaration or these Bylaws.

5. Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Committee or the President shall prescribe. If neither the President nor the Vice-President is able to act, the Committee shall appoint a member of the Committee to do so on an interim basis.

6. Secretary. The Secretary shall attend all meetings of the Committee and all meetings of the Association and keep minutes of such meetings and record all votes. The Secretary shall keep minutes of all proceedings in a book maintained for that purpose, and shall perform like duties for committees when required.

The Secretary shall give, or cause to be given, notices for all meetings of the Association and the Committee and shall perform such other duties as may be prescribed by the Committee.

The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses and such information or records that the Act, the Declaration or the Bylaws require. The list of Owners shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of

the Association and all sessions of the Committee including resolutions.

7. Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Managing Agent, and with the Assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Committee. He or she shall disburse funds as ordered by the Committee, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Committee, or whenever they may require it, an account of all his or her transactions as Treasurer and of the financial condition of the Project.

8. Parliamentarian. The Parliamentarian shall act in an official capacity at all the regular and special Committee Meetings and Owner's Meetings.

ARTICLE V

FISCAL YEAR

The fiscal year of the Association shall be the calendar year consisting of the twelve month period commencing on January 1 or each year and terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Committee should it be deemed advisable or in the best interests of the Association.

ARTICLE VI

AMENDMENT TO BY-LAWS

1. Amendments. These By-Laws may be modified or amended either:

(i) by the affirmative vote of a majority of the Percentage Interests at a regular or special meeting of the Association, or

(ii) pursuant to a written instrument of consent duly executed by a majority of the Percentage Interest provided all of the written consents are obtained within a ninety (90) day period.

2. Recording. An amendment to these By-Laws shall become effective immediately upon execution by the President and Secretary of the Association, and filing with the books and records of the Association, and recording in the recorders office for Salt Lake County.

ARTICLE VII

NOTICE

1. Manner of Notice. All notices, demands, bills, statements or other communications provided for or required under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail, first class, postage pre-paid;

(i) if to an Owner, at the address of his or her Residential Unit or at such other address as the Owner may have designated by notice in writing to the Secretary;

(ii) if to the Committee or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the Act, the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

ARTICLE VIII

COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Compliance. These By-Laws are set forth in compliance with the requirements of the Act.

2. Conflict. These By-Laws are intended to supplement the provisions of the Act and the Declaration. All Terms used in the Bylaws but not defined within them, except where clearly repugnant to the context, shall have the same meaning given in the Declaration or the Act. In the event of any conflict between these By-Laws and the Act or Declaration, the provisions of the Act or Declaration shall control, provided, however, that any specific provisions of these Bylaws shall control over any related but general provision of the Act or Declaration.

3. Severability. If any provisions of these By-Laws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these By-Laws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

4. Waiver. No restriction, condition, obligation, or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the

same.

5. Captions. The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

6. Gender or Grammatical Disclaimers. Whenever in these By-Laws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine.

7. Liability of Committee Members. The members of the Committee and the officers of the Association shall not be liable to any member of the Association for any damage, loss or liability arising out of or caused by their voluntary participation as a member of the Committee, including but not limited to any claims due to negligence, mistake of judgment, or for any acts or omissions made in good faith. In addition, the members of the Association agree to indemnify and hold the members of the Committee and officers of the Association harmless from any and all claims arising out of or caused by their voluntary participation as a member of the Committee or an officer of the Association to the extent any damage, loss or liability is not covered by insurance.

8. Prior Documents Superseded. These Amended and Restated By-Laws supersede and replace in their entirety all other By-Laws governing OAKCREST GARDENS or the OAKCREST GARDENS Homeowners Association, Inc.

DATED this 5th day of December, 2007.

OAKCREST GARDENS HOMEOWNER'S ASSOCIATION

Mary Lou Bentley, President
By: