

WHEN RECORDED PLEASE MAIL TO:

Gail Wathen  
 6372 Braxton Court  
 Salt Lake City, UT 84121

**CORRECTED AND RESTATED  
 DECLARATION OF  
 COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR THE  
 BRAXTON COURT SUBDIVISION**

This Declaration is made and executed this 16 day of May, 2005, by Steve<sup>N</sup>D. Clark and Dianne Clark, Brett J. Pinegar and Susan H. Pinegar, David H. Wathen, Trustee and Gail Wathen, Trustee, and Pamela O. Call, owners of the real property described herein and hereinafter collectively referred to as "Declarants".

**RECITALS**

A. Declarants are the record owners of those certain tracts of Property more particularly described in Exhibit "A" (attached and hereby incorporated) of this Declaration. Declarants desire to create a homeowners association to manage, maintain and care for the Common Area as described herein.

B. Declarants desire to provide for preservation of values and amenities in Braxton Court Subdivision, for maintenance of the Common Area, and for promotion of the health, safety and social welfare of each Owner of a part thereof. To this end and for the benefit of the Property and of the Owners thereof, Declarants desire to subject the Property described in Exhibit "A" to the covenants, restrictions, easements, charges and liens hereinafter set forth.

C. Declarants deem it desirable, for the efficient preservation of value in the development, to create an association which possesses the power to maintain and administer the Common Area, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose the Declarants have herein created, in conjunction with the recordation of this Declaration, an unincorporated association, the characteristics of which are defined herein and which shall be known as The Braxton Court Subdivision Owners Association.

NOW, THEREFORE, for the foregoing purposes, Declarants hereby declare that all of the Property described in Exhibit "A" of this Declaration is and shall be held, occupied,

improved, transferred, sold, leased and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Property and be binding on all parties having any right, title or interest in the property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## **ARTICLE I DEFINITIONS**

1.1 When used in this Declaration (including the foregoing portion hereof entitled "Recitals"), unless the context clearly indicates otherwise, the following terms shall have the meaning indicated.

1.2 **Association** shall mean and refer to the Braxton Court Subdivision Owners Association, an unincorporated association subject to the Community Association Act, 75-8a-101 et seq, Utah Code Annotated (the "Act"). The name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suits shall be brought and defended by the management committee or officers thereof on behalf of the agents for the Lot Owners in the manner specified by the Act, the declaration, or the bylaws, is: "The Braxton Court Subdivision Association".

1.3 **Common Area** shall mean and refer to that part of the Property which is maintained by the Association. All real property in Braxton Court is privately owned by one of the four Lot Owners; however, some of the real property and the improvements thereto are open to common use by all the Lot Owners. Thus, the term "Common Area" as used herein does not mean or grant an undivided ownership interest in another Lot Owner's property, but is used to define the real property in Braxton Court that shall be openly used, jointly maintained, and in which the remaining Lot Owners shall presently own and in the future shall continue to own an easement over and across. For example, the property lines for each of the Lots extend to the center of the road which is used and shared by all the Lot Owners; and that portion of a Lot Owner's Property that constitutes the road shall be Common Area and governed by the provisions of this Declaration dealing with Common Area. The Common Area as defined herein shall include the following: the brick fence along 6400 South; the planted area between said fence and 6400 South; lighting and the fixtures appurtenant thereto, both on the front pillars and also in the planted area; the entry gate and entry gate controls; and the paved roadway which serves as a right of way for ingress and egress, hereinafter referred to as the road. The Common Area shall be jointly maintained and/or replaced at the expense of the HOA. A map identifying some of the Common Area (the roadway only) is set forth in Exhibit "B", attached.

1.4 **Declaration** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Braxton Court Subdivision, as the same may be amended from time to time (The Declaration may at times also be referred as the CC&Rs).

1.5 **Declarants** shall mean and refer to Steve D. Clark and Dianne Clark, Brett J. Pinegar and Susan H. Pinegar, David Wathen and Gail Wathen, and Pamela O. Call, and their

successors and assigns if such successors or assigns should acquire all or substantially all of the Declarants' undeveloped and partially undeveloped Lots.

1.6 **Lot** shall mean and refer to any of the four (4) separately numbered parcels of land shown on the Plat Map comprising the Braxton Court Subdivision.

1.7 **Management Committee** shall mean and refer to a committee composed of the individual Owners of the four Lots, who are charged with and shall have the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property.

1.8 **Manager** shall mean and refer to the person, firm or company, if any, designated from time to time by the Association to manage, in whole or part, the affairs of the Association and the Property.

1.9 **Member** shall mean and refer to every person or entity who holds membership in the Association.

1.10 **Mortgage** shall mean any first mortgage or first deed of trust by which a Lot or any part thereof is encumbered.

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

1.12 **Owner** shall mean and refer to the owner of record (in the office of the County Recorder of Salt Lake County, Utah), whether one or more persons or entities, of a fee or undivided fee interest in any Lot, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record.

1.13 **Plat** shall mean and refer to the subdivision map of Braxton Court Subdivision, attached as Exhibit "B".

1.14 **Property** shall mean and refer to the tract of real property covered by the Plat, a description of which is set forth in Exhibit "A" of this Declaration.

1.15 **Subdivision** shall mean all the Property, Common Area and Lots in the Braxton Court Subdivision.

## ARTICLE II NATURE AND INCIDENTS OF OWNERSHIP

2.1 The Property and Lots shall be held, occupied, sold, leased, transferred and conveyed subject to the provisions of this Declaration. The Property is divided into Lots, each consisting of a fee simple interest in a Lot and an easement to over and across those

portions of the Property defined as Common Areas. The easements described herein are hereby declared to be appurtenant to the respective Lots.

### **ARTICLE III ASSOCIATION MEMBERSHIP AND VOTING**

3.1                   **Membership.** Every Lot Owner shall be a member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it is appurtenant. Any devise, encumbrance, conveyance or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association and the rights appurtenant thereto. Membership shall begin automatically and immediately upon becoming an Owner, and shall terminate immediately and automatically upon ceasing to be an Owner. No person or entity other than an owner or his designated legal representative (who must be a family member of the owner: spouse, child or parent) may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

3.2                   **Voting Rights.** The Association shall have one class of voting membership, which shall be equal for all Lot Owners.

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

3.4                   **Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such a requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership concerned.

3.5                   **Bylaws.** Attached hereto as Exhibit "C" are the Association Bylaws which shall govern those matters as set forth therein.

### **ARTICLE IV OWNERS RIGHTS IN COMMON AREA**

4.1                   **Owners' Easements of Use and Enjoyment.** Every Owner shall have a nonexclusive right and easement of use and enjoyment over those portions of the common area consisting of the entry gate and entry gate controls; and the paved roadway which serves as a right of way for ingress and egress, hereinafter referred to as the road. Only the road is a right of

way. The "common areas" associated with the wall and plantings between the wall and 6400 South are defined as a common area from a maintenance perspective. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Such right and easement shall be subject to the following:

(a) The right of the Association to adopt, rescind, amend and enforce rules and regulations governing the use of the Common Area.

(b) The right of the City of Murray, of Salt Lake County, and any other governmental or quasi-governmental authority having jurisdiction over the Property to access and ingress and egress over and across any private open space contained within the Common Area for purposes of providing police and fire protection, and providing any other municipal or governmental service.

(c) The rights and easements set forth below in Article V of this Declaration.

#### **ARTICLE V OTHER EASEMENTS**

5.1 **Utilities and Easements.** If the Common Area or any improvement thereon is traversed or partially occupied by a permanent utility line or similar or related improvement (including, but not limited to lines, pipes, wires, conduit and other equipment for culinary or secondary water, sewer, storm water, gas, telephone, electricity, television cable or multiple mailboxes) a perpetual easement for such utility or improvement and for the maintenance, repair and replacement thereof shall exist.

5.2 **Easements for Maintenance and Repair.** There is hereby granted to the Association, its officers, agent and employees (including employees of the Manager, if any) a right and easement to have access to all of the Common Area and to have access to the Lots from time to time during such reasonable hours as may be necessary or appropriate to perform the Association's obligations of maintenance and repair, to maintain any utilities for which and easement has been granted, to prevent damage to the Common Area or any residence or to perform any other function which the Association is obligated or permitted to perform under this Declaration, Bylaws or rules and regulations of the Association. Any damage caused thereby shall be repaired by the Association and at the expense of the Association.

#### **ARTICLE VI OPERATION AND MAINTENANCE**

6.1 **Operation and Maintenance of Common Area by Association.** Subject to the rights and duties of the Owners as set forth in this Declaration, the Association shall provide and be responsible for the management, control, operation, care, maintenance, repair, replacement and upkeep of the Common Area, and shall keep the same safe, operational, and in good working order.

6.2 **Rules and Regulations.** The Association shall have the power and the authority to promulgate, rescind, amend and enforce reasonable rules and regulations governing the use of the Common Area; provided, however, that such rules and regulations shall be consistent with the rights and obligations established by this Declaration. The Association shall furnish to each Owner copies of all such rules and regulations promulgated by the Association, and copies of all amendments thereto and rescissions thereof.

6.3 **Manager.** The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable.

6.4 **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE VII ASSOCIATION'S INSURANCE AND TAXES

7.1 **Public Liability Insurance.** The Association may obtain and maintain at all times a broad form of comprehensive liability insurance coverage, in such amounts and in such forms as the Association deems advisable to provide adequate protection for the Association, its Management Committee, the Manager (if any), agents and employees of the Association and the Members against liability for personal injury, death, and property damage arising from or incident to the ownership, operation, management, maintenance, repair, use, and other functions related to the Common Area. Said policy or policies of insurance shall provide a cross-liability endorsement pursuant to which the rights of the named insured among themselves are not prejudiced.

7.2 **Fire and Casualty Insurance.** In the event that the Common Area shall include any building or structures or other insurable improvements having an aggregate value in excess of Ten Thousand Dollars (\$10,000.00), the Association may obtain and keep in full force and effect at all times a policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full replacement value of all insurance improvements comprising part of the Common Area. The insured under any such policy shall be the Association.

7.3 **Fidelity Insurance or Bond.** The association may purchase, in such amounts and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of officers, agents or employees, destruction or disappearance of money or securities, and forgery.

7.4 **Officers and Directors Liability Insurance.** The Association may purchase and maintain insurance on behalf of any person who is a member of the Management Committee or other officer, director, agent or employee of the Association in such forms and amounts as the Association may deem necessary or appropriate in accordance with its Bylaws to

protect any such person against liability asserted against him or incurred by him in any such capacity or arising out of his status as such.

7.5 **Additional Insurance.** In addition to the insurance coverage required by this Declaration, the Association shall have the power and authority to obtain and maintain other similar and dissimilar insurance coverage in relation the Common Area and the Association's duties and responsibilities hereunder, which additional insurance coverage may be in such amounts and in such forms as the Association from time to time deems appropriate.

7.6 **Adjustment and Contribution.** Exclusive authority to adjust losses under policies hereafter purchased and maintained by the Association hereunder shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

## ARTICLE VIII BUILDING STANDARDS AND ARCHITECTURAL CONTROL

8.1 **Architectural Control Committee.** No structure shall be erected, placed or altered on any lot in the Subdivision until the construction plans and specifications and a plot plan showing the location of the structure have been approved in writing by the Architectural Review Committee (hereinafter "ARC"), as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. The ARC shall consist of the members of the Management Committee. All decisions of the ARC shall be made by majority vote. Members of the ARC shall not be entitled to compensation for their services.

8.2 **Compliance with Declaration.** Notwithstanding the foregoing provisions, the ARC members shall have no affirmative obligation to be certain that all construction in the Subdivision complies with the restrictions contained herein and no ARC member shall have any liability or responsibility for any decision or lack thereof, in carrying out the duties of a ARC Member. The sole responsibility for compliance with the provisions of this Declaration shall rest with the lot owners in the Subdivision.

8.3 **Residential Lots.** All Lots in the Subdivision shall be known and described as residential lots. No structure shall be erected, altered, placed or permitted to remain on any Lot which is not a single family dwelling not to exceed two stories in height with no less than a two-car garage. Any other outbuildings must be approved in advance by the ARC. Carports are prohibited.

8.4 **Dwelling Quality and Size.** All dwellings shall be of comparable size and quality as those existing at the time this Declaration is recorded.

8.5 **Construction Methods and Materials.** The exterior of any structure erected in the Subdivision shall have one hundred percent (100%) of its front area covered with

brick or stone and a majority of remaining structure covered with brick or stone. Other exterior materials must be approved by the ARC. There shall be no log homes, log-like siding, vinyl siding or aluminum siding permitted, unless in place at the execution date of this agreement. All buildings shall have a roof of at least a 4x12 pitch. All shingles shall be architectural asphalt shingles or bar tile or wood shake shingles.

8.6                   **Temporary Structures Prohibited.** No structure of a temporary nature, such as a trailer, basement, tent, shack, garage or other outbuilding shall be used on any lot at any time as a residence.

8.7                   **Continuing Application.** The provisions of this Section shall apply not only to all initial construction and development of and within the Property, but also in connection with any alteration, addition, restoration or reconstruction of buildings which are now or may hereafter be constructed or installed on any portion of the Property. All buildings shall be constructed or installed in accordance with the plans and specifications approved by the Association. No buildings shall be altered and no approved plans and specifications shall be modified in any respect pertaining to the exterior appearance or design of the subject buildings (or any other aspect of the same which is reflected in the plans and specifications previously approved by the Association) unless such alterations or modifications are approved in writing by the Association.

## ARTICLE IX ASSESSMENTS

9.1                   **Covenant to Pay Assessments.** Each Lot Owner hereby covenants and each Owner of any Lot by acceptance of instruments of conveyance and transfer thereof, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all annual and special assessments, such assessments to be fixed, established, levied and collected from time to time as hereinafter provided. No Owner may exempt himself or his Lot from liability from payment of the assessments provided for herein or diminish the amount of such liability by waiver or non-use of his rights concerning the Common Area or of services and amenities provided by the Association or by abandonment of his Lot.

9.2                   **Purpose of Assessments.** The annual and special assessments levied by the Association hereunder shall be used exclusively to promote the health, safety and welfare of the residents of the Property, to operate, maintain and improve the Common Area, and to perform any other functions which the Association is obligated or permitted to perform under this Declaration. Without limiting the generality of the foregoing provisions of this Section 9.2, the uses made by the Association of assessments collected hereunder may include, among other things, payment of the costs of the following: Expenses of management, including fees for a Manager, if any; all insurance that the Association is required or permitted to maintain hereunder; wages and related expenses for the services of such personnel as the Association may determine to be necessary or desirable for the proper performance of its functions hereunder whether such personnel are furnished or employed directly by the Association or by an person or



entity with whom it contracts; legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration; snow removal, landscaping and gardening services; utility expenses, including water and electricity; other necessary or desirable services for the improvement and maintenance of the Common Area or for the common use and benefit of the Owners as herein provided; any deficit remaining from a previous period; creation of a reasonable contingency, reserve, surplus and/or sinking fund; all goods and services procured by the Association in performing its responsibilities for maintenance of the Common Area and the exterior of the Lots hereunder; and any other expenses necessary or desirable to enable the Association to perform or fulfill its obligations, purposes, or functions under this Declaration.

9.3                   **Annual Assessments.** The Association may fix the annual assessment at an amount necessary to pay all expenses for maintenance of the Common Area. The annual assessments may be collected on a quarterly basis, which shall be at the rate of \$300.00 per quarter, until modified by the Management Committee. Assessments shall be paid commencing for with the calendar beginning July 1, 2005.

9.4                   **Special Assessments.** In addition to the annual assessments provided for above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; or (ii) the cost of any construction, reconstruction or unexpectedly required repair or replacement of items on or an improvement of the Common Area. Any such special assessment must be assented to by seventy-five (75 %) of the votes of the membership which Members present in person or represented by Proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least five (5) but not more than twenty (20) days prior to the meeting date. Any special assessments levied hereunder shall be divided among and assessed to the Lots in accordance with the rates specified in Paragraph 9.5 below, and shall be payable over such periods and on such terms as the Association may determine.

9.5                   **Rate of Assessments.** Both annual and special assessments shall be equally assessed against all Lot Owners. Notwithstanding any contrary provisions of this Declaration, this Section 9.5 may be amended only upon the affirmative vote of one hundred percent (100%) of the Lot Owners consenting and agreeing to such amendment by an instrument duly recorded in the official records of Salt Lake County, Utah.

9.6                   **Quorum Requirements.** The quorum required for any action authorized by Section 9.4 above shall be as follows: At the meeting called the presence of Members or of proxies entitled to cast seventy-five percent (75%) of all the votes of the Lot Owners shall constitute a quorum.

9.7                   **Late Fees and Interest.** Any annual or special assessment not paid within sixty (60) days of being due shall incur a late fee of not more than \$25.00 per month (as determined by the Management Committee) and shall bear interest at the rate of one percent (1%) per month from the date such portions become due until paid.

**9.8 Lien for Assessments.** All sums assessed to or levied against any Lot by the Association pursuant to the provisions of this Article IX, together with interest thereon and costs of collection hereof as herein provided, shall be secured by a lien on such Lot in favor of the Association. To further evidence such liens for sums assessed pursuant to this Article IX, the Association may (but shall not be obligated to) prepare a written notice of lien setting forth the amount of the assessment, the amount remaining unpaid, a description of the Lot, and the name of the record Owner thereof. Such notice shall be recorded in the office of the County Recorder for Salt Lake County, State of Utah. No such notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien shall exist solely by reason of this Declaration, and the preparation and recording of any such notice of lien shall not be required in order to create or perfect such lien, but shall be solely at the discretion and for the convenience and better protection of the Association. The Association may enforce such lien by judicial foreclosure in the same manner in which mortgages on real property may be foreclosed under Utah law. If the 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 Lot hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In any such foreclosure, the Owner of the Lot involved shall be required to pay all costs and expenses incurred by the Association in such proceeding, including court costs and reasonable attorney fees, and such costs and expenses shall be secured by the lien being foreclosed.

**9.9 Personal Obligation of Owner.** The amount of each annual assessment and each special assessment against any Lot shall be the personal obligation of the owner of such Lot to the Association. The Association may maintain a suit to recover a money judgment for such personal obligations without foreclosing or waiving the lien securing the same. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay all cost and expenses incurred by the Association in connection therewith, including court costs and reasonable attorney fee.

**9.10 Statement of Account.** Upon payment of a reasonable fee not to exceed \$25.00 and upon written request of any Owner or any Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth any unpaid amounts of prior annual and special assessments against such Lot, the amount of the current annual assessment against such Lot and the due date or due dates thereof, the amount of any obligations for reimbursement of the Association owing by the Owner of such Lot, and any credits or pre-paid items with respect to such Lot. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

**9.11 Liability of Purchaser.** Subject to the provisions of Section 9.10, a purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice such purchaser's right to recover from such seller the amount paid by the purchaser for such assessments.

## ARTICLE X USE RESTRICTIONS

10.1                   **Residential Uses Only.** Each Lot is intended to be improved with a Home to be used for single family residential purposes, and is restricted to such use. No Lot or Home shall be used for business or commercial activity except as provided in Section 10.12; provided, however, that nothing contained herein shall be deemed to prevent any Owner from leasing his Lot and Home, subject to all of the provisions of this Declaration.

10.2                   **Trash.** No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers. No metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property. No materials shall be kept or stored on any lot that would be unsightly or a fire hazard.

10.3                   **Nuisances.** No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. Parking of junk cars (those not properly licensed and regularly used) in the Subdivision is prohibited. No loud noises or noxious odors shall be permitted on the Property and the Association shall have the right to determine, in accordance with the Bylaws, if any noise, odor or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Owner in the Property, or exposed to the view of other Owners without the prior written approval of the Association.

10.4                   **Prohibition of Damage and Certain Activities.** No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner or any guest of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste of the Common Area caused by such Owner, his family, guests, tenants, or invitees. No Lot or Home shall be used, occupied or altered in violation of the law, so as to jeopardize or cause a hazard to any person or other property, so as to create a nuisance or interfere with the rights of any Owner, or in any way which would result in cancellation or increase in the cost of any insurance which the Association or any other Owner is required to maintain under this Declaration.

10.5                   **Restrictions on Further Subdivision.** No Lot shall be further subdivided or separated into smaller lots nor shall any Lot or fractional portion thereof be sold or conveyed so as to be held in divided ownership.

10.6                   **Signs.** No commercial sign of any kind shall be displayed to the public view on any lot except one professional sign of no more than 5 square feet advertising the property for sale. This is not intended to restrict the use of homemade signs signifying special

occasions such as birthdays or homecomings erected on a homeowners property for a period of less than 72 hours.

10.7                   **Fences.** No fence, wall or other similar structure shall be constructed or placed on any Lot nearer the street than the front house line, nor shall any fence, wall or similar structure be constructed to a height greater than 6 feet without the prior written approval of the Association. Any fence in place at the execution date of this agreement may be maintained and improved upon at its existing height.

10.8                   **Easements.** Easements and rights of way shall be reserved to the Declarants, their successors and assigns, on and over the Subdivision, as shown on the recorded plat, for the erection, construction and maintenance and operation thereon or therein of drainage pipes or conduits, pipes, manholes, poles, wires and other means of conveying to and from Lots in the Subdivision, gas, electricity, water, telephone, sewage and other services for the convenience of lot owners in the Subdivision.

10.9                   **Enforcement of Covenants.** The Management Committee or any Owner of any Lot in the Subdivision may enforce the covenants contained herein through any proceeding at law or in equity against any person violating them to enjoin or prohibit any violation and to recover any damages suffered by any Lot Owner.

10.10                  **Parking.** Driveways within the Property shall be used for parking of motor vehicles actually used by the owner or his immediate family for personal use and not for commercial use. There shall be no overnight parking on the road. No motor vehicle which is inoperable or unregistered shall be parked in a driveway for more than ninety-six (96) hours. Motor homes, boats and RVs shall not be parked in a front driveway or in the yards in front of the house; however these vehicles may be temporarily parked on an Owner's front driveway for no more than fifteen (15) days for the purpose of cleaning, loading and unloading the vehicle, and short-term storage.

10.11                  **Rental Restrictions.** The leasing of homes at Braxton Court is prohibited. However, the restrictions herein shall not apply if a Lot Owner moves from his home (a) due to temporary (less than three years) military, humanitarian, religious or charitable activity or service, and (b) leases his or her home with the intent to return to occupy his or her home when the military, humanitarian, religious or charitable service has concluded. Nor shall the restrictions herein apply if a parent or child leases their home to a family member (parent, grandparent, child, grandchild or sibling). Nor shall the restrictions herein apply if the Owner leases his home after having occupied the home for at least twelve (12) months. All leases, subleases, assignments of leases, and all renewals of such agreements shall be first submitted to the Braxton Court Management Committee who shall determine compliance with this section.

10.12                  **No Businesses.** Inasmuch as Braxton Court is a residential community, no business of any kind whatsoever shall be established, conducted, permitted, operated, or maintained at Braxton Court except they meet all of the federal, state and municipal laws, ordinances and licensing requirements, as well as complying with this Declaration unless approved by a unanimous vote of the Members of the Association . None of the provisions of

this Declaration shall apply to a business which operates from a home in the Subdivision at the effective date of this agreement. The following are the general requirements for home occupation businesses:

- (a) Customers, patrons, guests, clients or individuals may come to homes on an "appointment only" basis for business activity,
- (b) Adequate off road parking will be provided by the homeowner for any customers, patrons, guests, clients or individuals coming to homes for business activity,
- (c) No signage or advertising to the general public will be allowed which indicates the operation of a business from the residence,
- (d) No products may be sold or delivered to or from the home and no regular deliveries may be made to or from the residence, unless such business operated at the time of the effective date of this agreement or is approved by a unanimous vote of the members in the homeowners association; and
- (e) Only services that are done on the telephone and computer, such as professional services involving consulting, tax preparation, computer or internet businesses, may be provided at the residence, unless such business operated at the time of the effective date of this agreement or is approved by a unanimous vote of the members in the homeowners association.

10.13           **Animals.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of the Lots, except that dogs, cats or other household pets, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to Lot Owners. All pets must be kept on the Lots or on a leash when not on a Lot. This provision may be made more restrictive by Rule of the Association.

10.14           **Drainage System.** The Association covenants to pay up to \$3,000.00 for the purchase and installation of a drainage line and dry well or other appropriate drainage system to resolve and remedy water problems in the Common Area portion of Subdivision, which problem shall be resolved on or before August 30, 2010. All parties hereto acknowledge that the Wathens have contributed \$3,000 to the Association as of the date of recording this document to be used to install the drainage line. This provision shall not be modified without the consent of one hundred percent (100%) of the Lot Owners.

**ARTICLE XI  
MORTGAGE PROTECTION**

11.1                   **Notice of Owners' Default.** From and after the time a Mortgagee makes written request to the Association therefore, the Association shall notify such Mortgagee in writing in the event that the Owner of the Lot encumbered by the Mortgage held by such Mortgagee neglects for a period of sixty (60) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

11.2                   **Subordination of Assessment Liens to Mortgages.** The lien on a Lot for unpaid assessments provided for under Article IX shall be subordinate to the Mortgage affecting such Lot, and the Mortgagee thereunder which comes into possession of the Lot shall take the same free of such lien for unpaid assessments, but only to the extent of assessments which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.

**ARTICLE XII  
GENERAL PROVISIONS**

12.1                   **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the operation of the Property. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, limit, or otherwise affect the content, meaning, or intent of this Declaration or any Article, Section, or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof. Failure to enforce any provision, covenant, condition or restriction of this Declaration shall not operate as a waiver of any such provision, covenant, condition, or restriction or any other provision, covenant, condition, or restriction.

12.2                   **Compliance and Enforcement.** Each Owner and other occupant of the Property shall comply with the provisions, covenants, conditions, and restrictions of this Declaration, all rules and regulations promulgated hereunder by the Association, and all decisions and resolution of the Association adopted pursuant to the foregoing, as the same may be amended, modified, revised, or adopted from time to time. Failure on the part of any Owner or other occupant of the Property to comply with any of the foregoing shall be grounds for an action to recover damages or for injunctive relief or both, maintainable by the Association or in a proper case, by an aggrieved Owner. In the event of any action by the Association to enforce the provisions, covenants, conditions, or restriction of this Declaration or rules and regulations promulgated hereunder, whether by formal legal proceedings or otherwise, the Association shall be entitled to recover from the offending Owner all costs and expenses incurred by the Association in connection therewith, including court costs and reasonable attorney fees. The

obligations, provisions, covenants, conditions and restrictions contained in his Declaration with respect to the Association shall be enforceable by the Declarants or by any Owner through a proceeding for a prohibitive or mandatory injunction. The rights and remedies herein provided shall be in addition to all other rights and remedies of this Declaration, rules and regulations promulgated by the Association, and decisions and resolutions of the Association adopted pursuant thereto.

**12.3 Registration of Mailing Address.** Each Owner shall register with the Association from time to time his current mailing address. All notices and demands intended to be given to or served upon any Owner may be hand delivered or sent by first-class U. S. mail postage prepaid, and addressed to the Owner at his registered mailing address, or if no address has been registered, to the Owner at the address of his Lot.

**12.4 Obligation of Owners.** All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing or selling under contract his Lot. The Owner of a Lot shall have no obligation for assessments hereunder or other obligations hereunder (except interest and costs of collection with respect to prior obligations) accruing after he conveys such Lot.

**12.5 Amendment.** Except as otherwise provided herein, this Declaration may be amended only by an instrument duly executed and acknowledged by Members holding at least seventy-five percent (75%) of the votes of the Membership and recorded in the Official Records of the Court Recorder of Salt Lake County, Utah. Such right of amendment shall apply without regard to the subject matter or the nature of the amendment involved, provided only that such right of amendment shall be subject to the specific provisions of Article XI above (Mortgagee Protection) and Section 9.5 above (Rate of Assessments) and that any such amendment shall be consistent with applicable law.

**12.6 Covenants to Run with Land.** This Declaration and all the provisions hereof shall 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 Declarants, all parties who hereafter acquire any interest in a Lot or in the Common Area, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots or in the Common Area shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determination contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Area, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

**12.7 Declarants's Rights Assignable.** The rights of the Declarants under this Declaration or in any way relating to the Property may be assigned to any person or entity who acquires all or substantially all of the Declarants's rights and interests in and to the undeveloped and partially undeveloped Lots.

**12.8 Effective Date.** This Declaration and any amendment hereof shall take effect upon recording in the office of the County Recorder of Salt Lake County, State of Utah.

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

DECLARANTS

BRAXTON COURT SUBDIVISION

By David H. Wathen  
David H. Wathen, Trustee  
of the David H. Wathen  
Loving Trust

By Gail Wathen, Trustee  
Gail Wathen, Trustee of the  
Gail Wathen Loving Trust

By Brett J. Pinegar  
Brett J. Pinegar

By Susan H. Pinegar  
Susan H. Pinegar

By Pamela O. Call  
Pamela O. Call

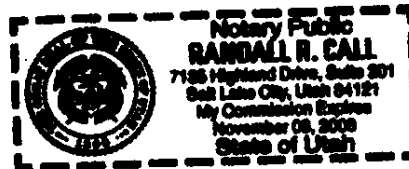
By Steven D. Clark  
Steven D. Clark

By Dianne Clark  
Dianne Clark

STATE OF UTAH )  
 ) :ss.  
COUNTY OF SALT LAKE )

On the 16 day of May 2005, personally appeared before me, the undersigned Notary Public, who acknowledged to me that they did in fact execute this Declaration.

Randall R. Call  
NOTARY





## Exhibit "A"

### PROPERTY DESCRIPTION OF LOTS IN BRAXTON COURT SUBDIVISION

Tax ID No.: 22-21-232-048 (Pinegar)

#### PARCEL 1:

Beginning at a point located 1220.76 feet South and 1074.41 feet West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Sale Lake Base and Meridian, and running thence West 126.75 feet to a concrete block wall; thence South 0 deg. 14'31" West 14.17 feet along said concrete wall; thence South 89 deg. 57'30" East 4.00 feet; thence South 0 deg. 15'01" West 135.74 feet to the North right of way line of 6400 South Street; thence South 89 deg. 57'30" East 123.41 feet along said right of way line; thence North 150.00 feet to the point of beginning.

#### PARCEL 2:

SUBJECT TO AND TOGETHER WITH a non-exclusive right of way, created by Warranty Deed recorded March 11, 1996 as Entry No. 6300093 in Book 7348 at Page 919, described as follows:

Beginning at a point located 1370.85 feet South and 956.97 feet West and 104.94 feet North 89 deg. 57'30" West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 129.92 feet; thence along a curve to the right 12.19 feet, (delta 46 deg. 34' R-15.0 feet); thence along a curve to the left 119.18 feet (delta 273 deg. 08' R-25.0 feet); thence along a curve to the right 12.19 feet, (delta 46 deg. 34' R-15.0 feet, long chord bears South 23 deg. 16'52" East 11.86 feet); thence South 129.90 feet to the North right of way line of 6400 South Street; thence South 89 deg. 57'30" East 25 feet along said right of way line to the point of beginning.

Tax ID No.: 22-21-232-049 (Call)

#### PARCEL 1:

Beginning at a point located 1009.80 feet South and 956.97 feet West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence <sup>West</sup> 117.44 feet; thence South 187.00 feet; thence East 117.44 feet; thence North 187.00 feet to the point of beginning.

#### PARCEL 1A:

SUBJECT TO AND TOGETHER WITH a non-exclusive right of way for ingress and egress over the following described property:

**Beginning at a point located 1370.85 feet South and 956.97 feet West and 104.94 feet North 89 degrees 57'30" West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 129.92 feet; thence along a curve to the right 12.19 feet, (delta=46°34' R=15.0 feet); thence along a curve to the left 119.18 feet, (delta=273°08', R=25.0 feet) thence along a curve to the right 12.19 feet, (delta=46°34', R=15.0 feet); thence South 129.90 feet to the North right of way line of 6400 South Street; thence South 89°57'30" East 25.0 feet along said right of way line to the point of beginning.**

**Tax ID: 22-21-232-049**

**Tax ID No.: 22-21-232-050 (Clark)**

**Beginning at a point located 1196.80 feet South and 956.97 feet West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence; West 117.44 feet; thence South 173.96 feet to the North right of way line of 6400 South Street; thence South 89°57'30" East 117.44 feet along said right of way line; thence North 174.05 feet to the point of beginning.**

**SUBJECT TO AND TOGETHER WITH A non-exclusive right of way for ingress and egress over the following described property:**

**Beginning at a point located 1370.85 feet South and 956.97 feet West and 104.94 feet North 89°57'30" West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 129.92 feet; thence along a curve to the right 12.19 feet (delta=46°34'; R=15.0 feet); thence along a curve to the left 119.18 feet, (delta=273°08', R=25.0 feet); thence along a curve to the right 12.19 feet, (delta=46°34', R=15.0 feet); thence South 129.90 feet to the North right of way line of 6400 South Street; thence South 89°57'30" East 25.0 feet along said right of way line to the point of beginning.**

**Tax ID No.: 22-21-232-047 (Wathen)**

**Beginning South 1009.80 feet and West 1074.41 feet from the Northeast Corner of Section 21, Township 2 South, Range 1 East, Salt Lake Meridian; and Running Thence West 118 feet to an Existing Fence Line as Described by That Certain Boundary Line Agreement, Recorded November 27, 1995, as Entry 6221643, in Book 7277, at Page 1694 of Official Records; Thence Running along Said Fence Line the Follow Three (3) Courses: (1) South 3°45'24" West 59.22 feet; (2) South 4°48'50" West 53.09 feet; (3) South 0°14'31" West 98.97 Feet; Thence Leaving Said Fence Line East 126.75 feet; Thence North 210.96 Feet to the Point of Beginning**

**SUBJECT TO AND TOGETHER WITH A non-exclusive right of way for ingress and egress over the following described property:**

**Beginning at a point located 1370.85 feet South and 956.97 feet West and 104.94 feet North  $89^{\circ}57'30''$  West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 129.92 feet; thence along a curve to the right 12.19 feet ( $\Delta=46^{\circ}34'$ ;  $R=15.0$  feet); thence along a curve to the left 116.44 feet, ( $\Delta=266^{\circ}52'$ ,  $R=25.0$  feet); thence along a curve to the right 12.19 feet, ( $\Delta=46^{\circ}34'$ ,  $r=15.0$  feet); thence South 129.90 feet to the North right of way line of 6400 South Street; thence South  $89^{\circ}57'30''$  East 25.0 feet along said right of way line to the point of beginning.**

**Exhibit "B"**

**MAP OF COMMON AREA**

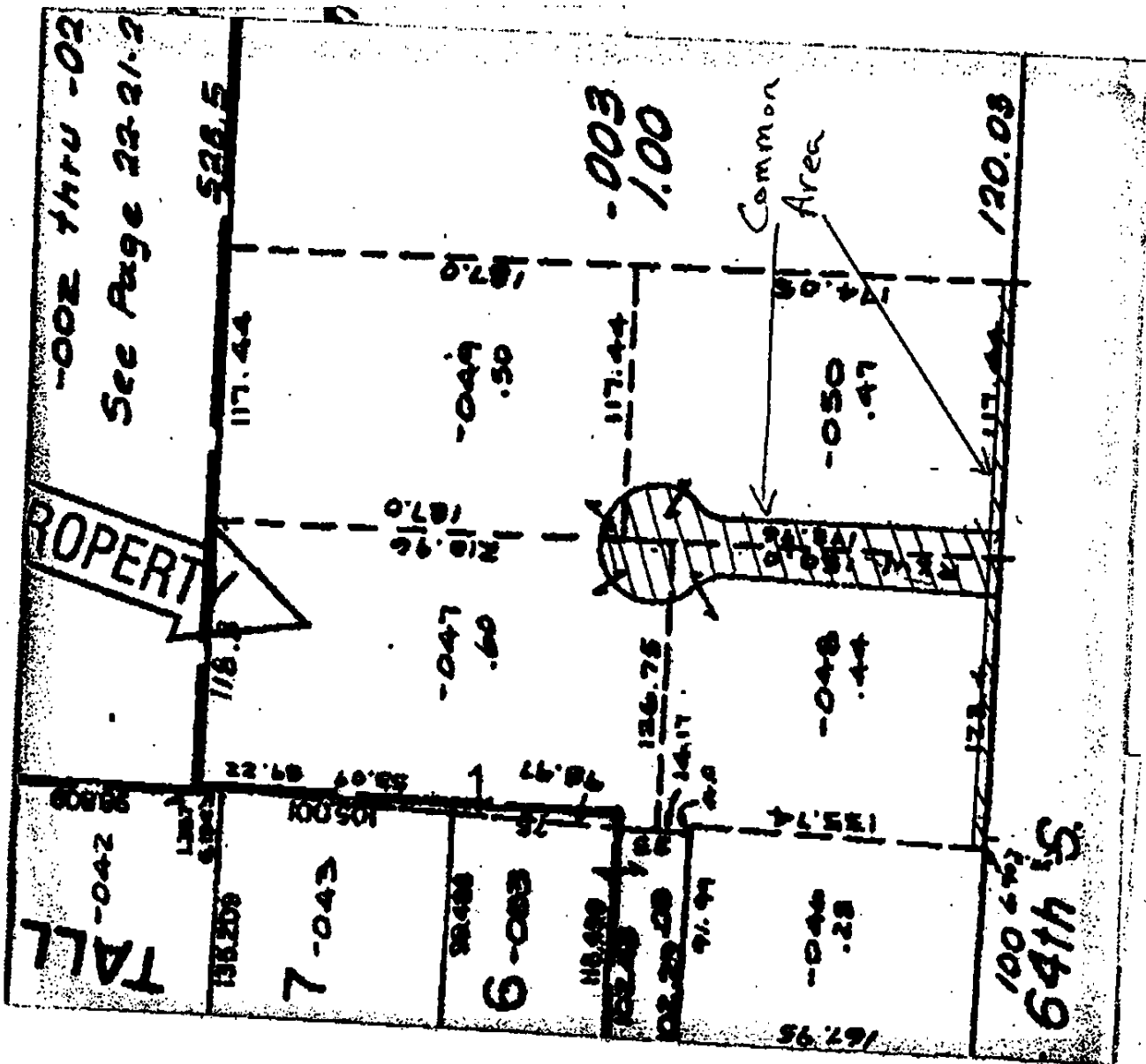


Exhibit B - Braxton Court  
Common Area

EXHIBIT C

BYLAWS

## **CORRECTED AND RESTATED BYLAWS**

### **BRAXTON COURT SUBDIVISION HOMEOWNERS ASSOCIATION**

The following are adopted by the Declarants as the administrative Bylaws for the Braxton Court Subdivision Homeowners Association.

#### **ARTICLE I PLAN OF LOT OWNERSHIP**

**Submission.** These Bylaws are referred to and incorporated by reference in the foregoing Declaration of the Braxton Court Subdivision (the "Declaration"), which is located in Salt Lake County, State of Utah. These Bylaws shall govern the administration of Braxton Court Subdivision and its Association of Owners.

2. **Conflict.** In the event of any conflict, incongruity or inconsistency between the provisions of these Bylaws and the provisions of the Declaration, the latter shall in all instances govern and control.

3. **Office and Registered Agent.** The Registered Agent of the Association shall be the President of the Association and the Registered Office of the Association shall be the office of the President or such other place as shall be designed by him.

4. **Bylaws Applicability.** All present and future Owners, residents, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted at Braxton Court Subdivision shall be subject to and abide by these Bylaws.

#### **ARTICLE II ASSOCIATION**

1. **Composition.** The association of Lot Owners is a mandatory association consisting of all lot Owners in Braxton Court Subdivision.

2. **Voting.** Each Lot Owner shall have one vote per Lot.

3. **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association 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 at 7:00 o'clock p.m. on the second Tuesday of May of each year, or at such other suitable day, date and time as may be designated by the Committee from time to time. When such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be the principal office of the Association unless otherwise specified in the notice of meeting.

5. **Special Meetings.** The President shall call a special meeting (a) if he so desires, (b) if a majority of the members of the Management Committee direct him to do so, or c) upon receipt of a petition signed and presented to the Secretary of the Committee by at least fifty percent (50%) of the members of the Association. 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 U.S. mail postage prepaid, a notice of (a) each annual meeting of the Owners not less than five (5) and not more than twenty (20) 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 of record, at the address of his respective Lot or such other address as each Owner may have designated by notice 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.

7. **Voting Requirements.** An Owner 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 shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid all Assessments and/or Additional Charges due.

8. **Proxies.** The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or in cases where the Lot 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 Lot 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 the execution thereof, to execute deeds on behalf of that person. 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 before the meeting. Only individual Lot Owners or the legal representative of an Organizational Lot Owner may be proxies.

9. **Quorum.** A majority of the members of the Association shall constitute a quorum for the adoption of decisions. If, however, 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 nor more than thirty (30) 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 Lot Owners representing a majority of the members of the Association present at the meeting either in person or by proxy, shall decide any question brought before the meeting; provided, however, if the Declaration requires a fixed percentage of Lot Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

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) election of Committee Members;
- e) unfinished business; and
- f) new business.

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

### **ARTICLE III MANAGEMENT COMMITTEE**

1. **Powers and Duties.** The affairs and business of the Association shall be managed by the Management Committee. The Management 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 Declaration, and may do all such acts and things necessary to operate and maintain the Project. The Committee may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for at least the following:

- a) Preparation of an annual budget;
- b) Determining the annual assessment of each Owner;
- c) Managing the Association;
- d) Maintaining the Common Areas and Facilities;
- e) Collecting the Assessments;
- f) Adopting and amending rules and regulations;
- g) Enforcing the Project Documents;
- h) Opening of bank accounts on behalf of the Association;
- I) Providing common utility services;
- j) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of these Bylaws;
- k) Commencing legal action when necessary;
- l) Purchasing and maintaining insurance;
- m) Paying the cost of all services rendered to the Association not billed directly to Owners of individual Lots.
- n) Keeping books and records of the Association;
- o) Giving notice of alleged violations of the Project Documents and providing the alleged violator the opportunity to be heard;
- p) Making emergency repairs;
- q) Doing such other things and acts necessary to accomplish the foregoing

2. **Composition of Management Committee.** The Management Committee shall be composed of four (4) members of the Association, each of whom shall be Lot Owners of different Lots.

3. **Qualification.** Only individual Lot Owners or officers or agents of organizational Owners other than individuals shall be eligible for Committee Membership.

4. **Election and Term of Office of the Committee.** The term of office of membership on the Committee shall be two (2) years and each member shall serve on the Committee until such time as his successor is duly qualified and elected.

5. **Initial Organizational Meeting.** The first meeting of the members of the Committee shall be immediately following the annual meeting of the Association or at such other time and place designated by the Committee.

6. **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, but no less often than annually .

7. **Special Meetings.** Special meetings of the Committee may be called by the President, Vice-president or a majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. mail postage prepaid, 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.

8. **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 such 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.

9. **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 the 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.

10. **Vacancies.** Vacancies in 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. A vacancy created by the removal of a member by a vote of the members of the Association at a special meeting called for that purpose shall be filled by the election and vote of the members of the Association at said meeting.

11. **Compensation.** Committee members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Committee business and approved by the Committee.

12. **Conduct of Meetings.** The President shall preside over all meetings of the Committee and the Secretary shall keep a Minute Book of the Committee recording therein all resolutions adopted by the Committee and a record of all transactions and proceedings occurring at such meetings.

14. **Action Without a Formal Meeting.** Any action to be taken at a meeting of the Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all members of the Committee.

15. **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 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.

2. **Election of Officers.** The officers of the Association shall be elected annually by the members of the Management Committee at their first meeting after the annual meeting of the Association. Any vacancy in an office shall be filled by the remaining members of the Management Committee at a regular meeting or special meeting called for such purpose.

3. **Removal of Officers.** The officers shall hold office 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 successor may be elected at any regular meeting of the Committee, or at any special meeting of the Committee called for such purposes.

4. **President.** The President shall be the chief executive officer; he shall preside at meetings of the Association and the Committee and shall be an ex officio member of all committees; he

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.

5. **Secretary.** The Secretary shall attend all meetings of the Committee and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him or her for that purpose and shall perform like duties for committees when required. He 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. This list 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. He 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 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 transactions as Treasurer and of the financial condition of the Project.

#### **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 of each year 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 BYLAWS**

1. **Amendments.** These Bylaws may be modified or amended either (I) by the affirmative vote of a majority of the Lot Owners of the Association or (ii) pursuant to a written instrument of consent duly executed by a majority of the Lot Owners of the Association provided all of the written consents are obtained within a ninety day period.

2. **Recording.** An amendment to these Bylaws shall become effective immediately upon recordation in the Office of the County Recorder of Salt Lake County, State of Utah.

#### **ARTICLE VII NOTICE**

1. **Manner of Notice.** All notices, demands, bills, statements, or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage pre-paid.
2. **Waiver of Notice.** Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these Bylaws, 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 Declaration.

#### **ARTICLE VIII COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS**

1. **Compliance.** These Bylaws are set forth in compliance with the requirements of the Declaration.
2. **Conflict.** These Bylaws are subordinate and subject to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration.
3. **Severability.** If any provisions of these Bylaws 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 Bylaws 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 Bylaws 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 Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

6. **Construction.** Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; the use of any gender shall be deemed to include both masculine and feminine, and the term “shall” is mandatory and “may” permissive.

7. **Effective.** These Bylaws shall be effective upon recording in the Office of the County Recorder of Salt Lake County.

Dated the 16 day of May, 2005.

DECLARANTS

BRAXTON COURT SUBDIVISION

By *David H. Wathen*  
David H. Wathen, Trustee  
of the David H. Wathen  
Loving Trust

By *Gail Wathen*, Trustee  
Gail Wathen, Trustee of the  
Gail Wathen Loving Trust

By *Brett J. Pinegar*  
Brett J. Pinegar

By *Susan H. Pinegar*  
Susan H. Pinegar

By *Pamela O. Call*  
Pamela O. Call

By *Steven D. Clark*  
Steven D. Clark

By *Dianne Clark*  
Dianne Clark

STATE OF UTAH                    )  
  :SS.  
COUNTY OF SALT LAKE    )

On the 16 day of May, 2005, personally appeared before me, the undersigned Notary Public, who acknowledged to me that they did in fact execute these Bylaws.

*Randall R. Call*  
NOTARY

