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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNTAIN VIEW MEADOWS, PRD

THIS DECLARATION is made on the date hereinafter set forth by Chesapeake Bay Investments, LC a Utah limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Payson, County of Utah, State of Utah, which is more particularly described as:

LOTS 1-65 of Mountain View Meadows, PRD according to the plat of record in the office of the County Recorder, Utah County, Utah, recorded in Book

Page

Book 46

page 494

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property, and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

### ARTICLE I

#### DEFINITIONS

Section 1. "Association" shall mean and refer to THE MOUNTAIN VIEW MEADOWS HOMEOWNER'S ASSOCIATION, a Utah corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of legal title to any Lot which is a part of the Properties, including contract Sellers, but excluding those having such interest merely as security for the performance of an obligation. Where the legal title is vested of record in a Trustee, legal title shall be deemed to be in the Trustor.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereon) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Lots 63,64, and 65 of Mountain View Meadows, PRD according to the plat of record in the Office of the County Recorder, Utah County, Utah recorded in Book 410 of Maps, Page 494.

Section 5. "Plat" shall refer to that plat recorded in Book 410 of Maps, Page 494, in the office of the Utah County Recorder.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. "Declarant" shall mean and refer to Chesapeake Bay Investments, LC, a Utah limited liability Company, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the declarant for the purpose of development.

Section 8. "Mortgage" shall include Deeds of Trust and similar security instruments under valid Agreements of Sale.

Section 9. "Bylaws" shall mean the Bylaws adopted by the Board of Directors of the Association, as amended.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or

utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.

(d) the right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereon; and

(e) the right of the Association to amend this Declaration, the Association's Articles and Bylaws or its published rules and regulations after due notice and hearing as provided in the Bylaws.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by and charges discussed herein, by waiver of the use or enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot. Each individual who signs a purchase contract for a Lot on behalf of a corporation, partnership or other entity shall be personally liable for the assessments on said Lot notwithstanding any principle or rule of law to the contrary.

Section 4. Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his or her Lot shall not be subject to any right of first refusal or similar restriction imposed by the Association.

Section 5. Leasing Restrictions. All leases or rental agreements for Lots shall be in writing and specifically subject to the requirements of the Association's Articles of Incorporation, Bylaws, Management Agreement, and these Restrictions, as now in effect or duly adopted or amended. No Lot may be leased or rented for less than a minimum initial term of six months unless otherwise agreed to by the Association's Board of Directors.

Section 6. Restrictions on Mortgaging Lots. Notwithstanding anything to the contrary stated herein, no Owner shall be restricted in his or her right to mortgage or otherwise encumber the Lot or Lots which he or she owns.

Section 7. Notice. Upon the sale or lease of a Lot by an Owner, Owner shall deliver to the Association, within 10 days of the signing of any lease or deed transferring title, a copy of said instrument setting forth the name, address and telephone number of the lessee or vendee as the case may be.

### ARTICLE III

## MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) within two (2) years from conveyance of the first Lot in the project to a Class A member.

Section 3. In the event any Owner is in arrears in the payment of any amount due pursuant to any provision of this Declaration for a period of thirty (30) days or shall be in default in the performance of any provisions of this Declaration for a period of thirty (30) days, that Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until payments are brought current or otherwise as provided in Article II, Section 1(b) hereof.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fee, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together

with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Their personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and for the improvement and maintenance of the Common Area. The assessments shall cover the cost of water and sewer for the Common Area, garbage removal services of the City of Payson, the cost of all repairs, replacement and maintenance of the Common Area and all other authorized activities and facilities, including, but not limited to, common yard maintenance, private drive maintenance, sprinkler system, tennis court(s), playground, basketball court(s), common parking areas, parkway landscaping, costs of additional common facilities and improvements, professional fees, taxes and insurance for the Common Area, as may, from time to time, be authorized by the Association's Board of Directors. The Association may impound each Owner's share of Common Area insurance at the time of closing. Notwithstanding anything herein to the contrary, each Owner shall provide and pay directly for insurance covering the structure of his or her Lot as well as water and sewer services for his or her Lot.

Section 3. Establishment of Assessment. Declarant and each owner of a Lot covenants for themselves and their heirs, successors and assigns, that such Lot shall be subject to an assessment, in an amount to be determined by the Association, as permitted by this Declaration of Covenants, Conditions and Restrictions. The amount to be prorated among the members of the Association shall be established annually by the Board of Directors.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be Sixty Dollars (\$60.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than the amount that the cost of living has increased above the maximum assessment for the previous year according to the index which is maintained by Zions First National Bank, a national banking association, without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the amount that the cost of living has increased according to the index which is maintained by Zions First National Bank, a national banking association, by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an

amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Section 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 60 percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. In addition to the above, any assessment not paid on or before the due date shall be automatically assessed \$25.00 as a late charge.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to

mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

## ARTICLE V

### MAINTENANCE

Section 1. Owner. Each Owner shall be responsible for the upkeep and maintenance of his Lot and for the upkeep and maintenance of individual patios, all other areas, features, or parts of his Lot and property not otherwise maintained by the Association. All fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Lot, shall be maintained and kept in repair by the Owner thereof. Termite control shall be the responsibility of the Owner. An Owner shall do no act nor any work that will impair any easement or hereditament, not do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners.

- (a) Front Yard Landscape Restrictions. The front yard landscape restrictions extend from the street curb to within 20 feet of each home's foundation. Restrictions include: maintenance and replacement, if death occurs, of the same Kentucky Blue Grass and flowering trees as originally installed, no other varieties are acceptable; no additional landscaping may be added to the restricted area except for what appears on the landscape plan (Exhibit A); i.e. gardens, trees, flower beds, etc.

Section 2. Association. The Association will pay monthly dues which will provide maintenance services for the commons area parks from April 1 through October 31. These services will include:

- 2) Spring Cleanup. This will be done in March (or as weather dictates). Cleanup includes the following: removing all trash that has accumulated over the winter months including sidewalks, curbs, and gutters; raking all leaves that were not removed last Fall; aerating of lawns; fertilizing with a high nitrogen fertilizer to get grass off to a healthy start; pruning all trees and shrubs to remove damaged or dead material caused by the snow and cold; turning on sprinkler systems and repairing any damage caused by winter; and making grounds ready for growing season.
- 3) Lawn Maintenance. Lawns need to be cut every seven days in the active growing season (April through October). Trimming of tall grass from around trees and other obstacles will be done weekly. Edging turf along cement surfaces and curbs will be done monthly. Fertilizing lawn areas with nitrogen will be done at least four times between April and October. Weed, disease, and insect control will be performed throughout lawn areas as needed upon inspection.
- 4) Sprinkler Maintenance. Maintenance will be done on a weekly basis after mowing to insure there has been no damage done to system. Adjustments will be made to automatic controllers to compensate for changes in the weather. If sprinklers have been damaged by someone other than contracted maintenance company, the necessary repairs will be made and then billed to the Association. The maintenance company will not be responsible for

- adjustments made on sprinklers or clocks by anyone other than themselves.
- 5) Trees. Trees will be pruned during dormant season to help maintain their proper form and to prevent wind and snow damage. Trees will be inspected periodically to monitor insect and disease problems and they will be treated accordingly.
  - 6) Shrubs. Shrubs will be pruned as needed to maintain appearance, provide for growth, and prevent wind and snow damage. Fertilization of shrubs will be done in the spring to encourage maximum growth and health.
  - 7) Weed and Miscellaneous. Cultivating flower and shrub areas will be performed for weed control and general appearance. General Exterior cleanup includes paper, cans, and waste material of all kinds on landscaped areas. Curb, gutter, and sidewalks will be attended to also.

## ARTICLE VI

### DAMAGE OR CONDEMNATION OF PROPERTY; INSURANCE

Section 1. Damage by Owner. In the event any common element is damaged or destroyed by an Owner or any of this guests, tenants, licensees, agents, or members of this family, such Owner shall be liable to the extent provided under Utah law to repair the damaged element, and the Association shall so repair the damaged element in good workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association in the amount actually expended for such repair.

Each Lot Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon Owner's Lot and shall continue to be such a lien until fully paid. The lien shall be subordinate to any first mortgage or encumbrance on the subject property. Said charges shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The amount of principal and interest owed by the Owner to the Association shall be a debt, and shall be collectable by any lawful procedure allowed by the laws of the State of Utah.

Each such Owner, by this acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner for the collection for such charges and to enforce and aforesaid lien by all methods available for the enforcement of such liens and such Owner hereby expressly grants to the Association power of sale in connection with the lien.

Nothing contained in the Article VII shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under the policy or policies, had not this Article been inserted.

In the event of a dispute between an Owner and the Board of Directors with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof, then, upon written request of the Owner, addressed to the association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association or its Board



of Directors. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by the Board of Directors, one chosen by the Owner, and these two arbitrators shall then choose a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then he shall be chosen by any Judge of the Superior Court of Utah in and for the County of Utah. A determination by any two of the three arbitrators shall be binding upon the Owner and the Association, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then the other party shall have the right and power to chose both arbitrators.

Section 2. Insurance. The Association shall maintain in effect casualty and liability insurance and fidelity bond coverage as specified in this paragraph.

(a) The Association shall obtain, maintain, and pay the premiums as a common expense a policy of property insurance covering all of the Common Area (except land, foundation, excavation, and other items normally excluded from coverage) including fixtures and any building service equipment to the extent that they are a part of the Common Area, as well as common personal property as applies. Such policy shall provide, as a minimum, protection against loss or damage by fire and other periods normally covered by the standard extended coverage endorsement, as well as all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement. Such insurance shall be in an amount equal to 100% of the current replacement cost of the Common Area of the properties, exclusive of land, foundation, excavation, and other items normally excluded form coverage. The name of the insured under such policy shall be set forth therein substantially as follows:

"MOUNTAIN VIEW MEADOWS HOMEOWNER'S ASSOCIATION, a Utah non-profit corporation."

The policy shall provide that it may not be canceled or substantially modified without at least ten days (10) prior written notice to the Association. Such insurance shall provide for an agreed amount and inflation guard endorsement, if available.

(b) The Association shall also maintain comprehensive general liability insurance coverage covering all of the Common Area, owned by the Association, whether or not they are leased to some third party and covering all officers of the Association. Coverage limits shall be in the amounts generally required by private institutional mortgage investors for projects similar in construction, location and use, and shall in any event be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area and legal liability arising out of lawsuits related to employment contracts of the Association. Such policies must provide that they may not be canceled or substantially modified by any party without at least ten (10) days' prior written notice to the Association.

Section 3. Condemnation. If a portion or all of the Common Areas

should be taken by exercise of the power of eminent domain, or should be transferred and conveyed to a condemning authority in anticipation of such exercise, the entire award made as compensation for such taking, including but without limitation, any amount awarded as severance damages, or the entire amount therefrom, in each case, reasonable and necessary costs and court costs (which net amount is hereinafter in this Section 4 referred to as the "Award") shall be paid to the Board as trustee for all Owners and First Mortgages. As soon as practicable, the Board shall utilize the Award to restore the portion of the Common Area thus taken if any, and shall divide the remainder of the Award amount to the Owners according to their shares in the Common Area set forth above. If the cost of repair and restoration of the Common Area shall exceed the amount of the Award, a special assessment shall be levied against the Owners to the extent necessary to make up such deficiency, such assessment to be levied equally against the Owners of Lots. The special assessment provided for herein shall be secured by the lien provided for in this Declaration. Nothing herein contained shall be deemed to impair or affect the priority of any First Mortgagee in any proceeds of any condemnation award.

## ARTICLE VII

### USE RESTRICTIONS

Section 1. Residential Use. Lots 1- 62 inclusive, of Mountain View Meadows, shall be single-family residential Lots, and there may be erected on any one Lot not more than one single-family residence plus such accessory and auxiliary garages guest house and servants quarters as are incidental to single-family residential use. No other buildings shall be erected on any of said Lots, nor shall any of said Lots or any part thereof be used for any business purpose whatsoever. Each dwelling unit shall be a single family detached unit with no less than 1000 square feet of finished floor space and an attached two car garage.

Section 2. Subdividing. No Lot shall be re-subdivided into smaller Lots nor conveyed or encumbered in less than the full original dimensions of such Lot as shown by the recorded plat, without the prior written approval of the Declarant, so long as Declarant owns any lot, after which written approval of the Board shall be required. Nothing herein contained shall prevent the dedication or conveyance of portions of Lots for public utilities purposes in which event the remaining portion of such Lots shall, for the purpose of this provision, be treated as a whole Lot.

Section 3. Abandonment of Lot Lines. Two or more adjoining Lots may be combined and their original lot lines abandoned so as to permit construction in the middle of such consolidated properties. Thereafter any such consolidated Lots shall be treated for all purposes as though their expanded dimensions had originally constituted only one Lot.

Section 4. Parking. Automobiles of the private passenger class and pickup trucks not exceeding three-quarter ton may be parked on the side of any Lot; provided that any such parking area shall comply with the same set back requirements as the residential dwellings. Campers, horse trailers, and boats may be parked on the back of any Lot; provided that any such parking area shall be attractively screened or concealed from neighboring Lots, roads, or streets, and then only with the prior approval of the Board. All other trucks, vehicles and equipment

shall not be kept on any Lot or street except in a private garage. No motor vehicle which is under repair or not in operating condition shall be placed or permitted to remain on any street or streets, or any portion of any Lot, or Lots, in Mountain View Meadows, unless it is within an enclosed garage or structure.

Section 5. Fenced Areas. No front yard fence or wall is permitted. Back and Side yard fences are permitted, however materials and design must be approved by the board.

Section 6. Upkeep Assessment. The Owners of all Lots shall keep the same reasonably clean and clear of weeds and trash, so as not to cause unsightly or dangerous condition, and if such Owner should fail after (10) days written notice from the Board to remove said weeds or trash, the Board shall have the right to enter upon such Lot and may cause the same to be cleaned four times yearly, if necessary, and assess the actual cost thereof to the Owner of such Lot. Any such assessment shall be a lien against the Property and may be enforced as set out in Article IV.

Section 7. Utility and Service Units. No gas, electric, power, telephone, water, sewer, cable television or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any Lot, except to the extent, if any, underground placement thereof may be prohibited by the law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required.

Section 8. Burning and Incinerators. No open fires or burning shall be permitted on any Lot at any time and no incinerators or like equipment shall be placed, allowed or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

## ARTICLE VIII

### WATER

The association shall provide water only for use on the Common Area and shall not be responsible to provide water for any Lot herein for domestic consumption or landscape maintenance. The cost of water used for the Common Area shall be paid by the Association from assessments levied pursuant to Article IV.

## ARTICLE IX

### RIGHTS OF ELIGIBLE MORTGAGE HOLDERS, INSURERS OR GUARANTORS

Section 1. Notice of Action. Upon request to the Association, identifying the

name and address of the holder, insurer or guarantor, and the Lot number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by Owner of a Lot subject to a first mortgage held, insured, or guarantor which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in Section 2 below or in Section 4 of Article XII.

Section 2. Other Provisions for Eligible Mortgageholders. Eligible mortgageholders shall also be afforded the following rights:

(a) Any restoration or repair of the project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the declaration and the original plans and specifications unless other action is approved as specified in Article VII above.

(b) Any election to terminate the legal status of the project after substantial destruction of a substantial taking in condemnation of the project property requires the approval of eligible holders holding mortgages on Lots which have at least 51% of the vote of Lots subject to eligible holder mortgages.

(c) No reallocation of interest in the Common Area resulting from a partial condemnation or partial destruction of the project may be effected without the prior approval of eligible holders holding mortgages on all remaining Lots whether existing in whole or in part, and which have at least 51% of the vote of such remaining Lots subject to eligible holder mortgages.

(d) Where professional management has been previously required by any eligible mortgage holder or eligible insurer or guarantor, whether such entity became an eligible mortgage holder or eligible insurer or guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of Owners of Lots to which at least 67% of the votes in the Association are allocated and the approval of eligible holders holding mortgages on the Lots which have at least 51% of the votes of Lots subject to eligible holder mortgages.

## GENERAL PROVISIONS

Section 1. Enforcement. The covenants, restrictions, reservations and conditions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing, occupying, owning and otherwise having an interest in any lot, their heirs, personal representatives, administrators, successors, grantees and assigns. After the date on which this instrument has been recorded, these covenants, restrictions, reservations and conditions and all decisions of the Association, or its Board of Directors, which shall have the right and duty to enforce the same and expend Association monies in pursuance thereof, and also may be enforced by the Owner of any Lot or by the holder of any first mortgage, or deed of trust, or the Owner under a valid agreement of sale, or any one or more of said parties. Any lien, liability or obligation arising as the result of a breach of the covenants, restrictions, reservations and conditions shall be binding upon and effect against any Owner of the premises, other than one whose title thereto is acquired by foreclosure of a mortgage, or deed of trust sales, or deed in lieu of foreclosure, or forfeiture proceeding or sheriff's sale or equivalent proceedings. Any person shall take such title subject to the lien hereof for all the charges pursuant to the provisions of this Declaration that have accrued up to the time of such taking of title, and subject to the lien hereof for all the charges pursuant to the provisions of this Declaration that have accrued up to the time of such taking of title, and subject to the lien hereof for all the charges pursuant to the provisions of this Declaration that have accrued up to the time of such taking of title, and subject to the lien hereof for all the charges that shall accrue subsequent to the taking of such title. Any person or entity acquiring title by foreclosure, or forfeiture of any agreement of sale, or sheriff's sale or equivalent proceedings, shall take title subject to the liens hereof for only those charges that accrue subsequent to the taking of such title. The breach of any of the covenants, restrictions of such title. The breach of any of the covenants, restrictions or conditions may be enjoined or reviewed by appropriate proceedings notwithstanding the lien or existence of any mortgage or deed of trust. ALL INSTRUMENTS OF CONVEYANCE OF ANY INTEREST OF ALL OR ANY PART OF A LOT SHALL CONTAIN REFERENCE TO THIS INSTRUMENT AND SHALL BE SUBJECT TO THE COVENANTS, RESTRICTIONS, RESERVATIONS AND CONDITIONS HEREIN. THIS INSTRUMENT SHALL BE BINDING UPON ALL RESALE PURCHASERS OF LOTS AND UPON ALL PERSONS AFFECTED BY ITS TERMS, WHETHER OR NOT EXPRESS REFERENCE IS MADE TO THIS INSTRUMENT OR IN ANY SUCH INSTRUMENT OF CONVEYANCE. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. Owners of individual Lots shall have similar rights of action against the Association, where applicable.

Section 2. Attorney's Fees. In the event the Association employs an attorney or attorneys to enforce the collection of any amounts due pursuant to this Declaration or in connection with any lien provided for herein, or the foreclosure thereof, or to enforce compliance with specific performances of the terms and conditions of this Declaration, the Owner, Owners and parties against whom the action is brought shall pay all attorneys' fees, costs and expenses thereby incurred by the Association in the event the Association prevails in any such action.

Section 3. Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part hereof, all of which are inserted conditionally on their being held valid in law and in the

event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs or section or sections had not been inserted.

In the event that any provision or provisions of this instrument appear to be violative of the Rule against Perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the 1st surviving incorporator of Highgrove Estates, or twenty one (21) years after the death of the last survivor of all of the incorporator's children and grandchildren who shall be living at the time this instrument is executed, whichever is the later.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by persons or parties owning not less than sixty-six and two-thirds percent (66 2/3%) of the Lots and thereafter by an instrument signed by persons or parties owning not less than sixty-six and two-thirds percent (66 2/3%) of the Lots. Any amendment must be recorded.

The consent of Owners of Lots to which at least 67% of the vote in the Association are allocated and the approval of eligible holders holding mortgages on Lots which have at least 67% of the votes of Lots subject to eligible holder mortgages shall be required to terminate the legal status of the project as a planned unit development. In addition, the approval of eligible holders holding mortgages on Lots which have at least 51% of the votes of Lots subject to eligible holder mortgages shall be required to add or amend any material provisions of the Restrictions which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair, and replacement of a Common Area;
- (d) Insurance or fidelity bonds;
- (e) Rights to use of the Common Area;
- (f) Responsibility for maintenance and repair of the several portions of the Property;
- (g) Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
- (h) Boundaries of any Lots;
- (i) The interests in the Common Area;

- (j) Convertibility of Lots into Common Area or of Common Area into Lots;
- (k) Leasing of Lots;
- (l) Imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer, or otherwise convey his or her Lots;
- (m) Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, or eligible insureds or guarantors of first mortgages on Lots.

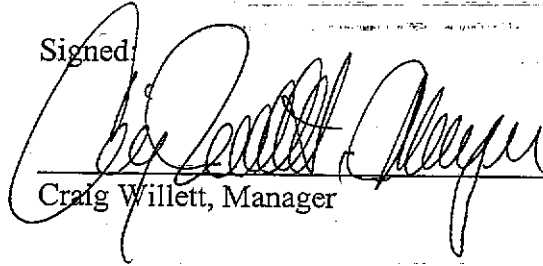
The foregoing provisions of this Section 4 shall not apply to amendments made as a result of destruction, damage or condemnation. In addition, any additional amendments shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

An eligible mortgage holder who receives a written request to approve additions or amendments to the Articles of Incorporation, Bylaws, any management agreement, or the Restrictions, but who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 9<sup>th</sup> day of June, 1998.

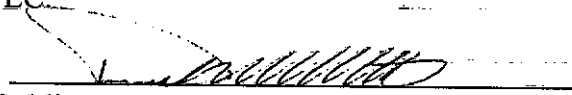
Chesapeake Bay Investments, LC  
a Utah Limited Liability Company

Signed:

  
\_\_\_\_\_  
Craig Willett, Manager

STATE OF UTAH     )  
                                  ) ss.  
County of Utah     )

On this 9<sup>th</sup> day of June, 1998, before me, a Notary Public, personally appeared Craig Willett, Managing Member of Chesapeake Bay Investments, LC a Utah Limited Liability Company known to me to be the person whose name is subscribed to the foregoing instruments, acknowledged that they executed the same for the purposes therein contained, being authorized so to do on behalf of the LC.

  
\_\_\_\_\_

Notary Public  
My Commission Expires: 7-9-99

