

REVISED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR  
RIDGEPOINTE SUBDIVISION  
OR  
RIDGEPOINTE ESTATES

D E C L A R A T I O N

Now, Therefore Declarant hereby declares that all of the Property together with any property hereinafter added or annexed as provided herein, shall be acquired, held, sold and conveyed subject to the provisions of this Declaration which are hereby declared to be in furtherance of a plan to promote and protect the cooperative use, conduct, and maintenance of such property and are established for the purposes of enhancing and protecting the value, desirability and attractiveness thereof and which shall run with the Property and be binding upon all parties having or hereinafter acquiring any right, title or interest in the Property or any part thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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FOR: BRADLEY PAUL

ARTICLE I  
DEFINITIONS

1. Definitions. Unless the context otherwise requires, the following words shall have the following meanings:

1.01 "Association" shall upon conveyance of the Common Area to the Association by the Declarant pursuant to paragraph 2.03 or 2.05 herein, mean the RidgePointe Estates Homeowners Association, an Utah non-profit corporation, and its successors and assigns. The Association shall act by and through its Board of Directors. Unless the context otherwise specifies, and until and unless the Common Area is conveyed to the Association pursuant to paragraph 2.03 and 2.05 herein, any reference to the "Association" in this Declaration shall mean the Declarant.

1.02 "Common Area" shall mean all real property and improvements thereon, including the Clubhouse facilities, open space/slope easements, open space or street landscaping, and private streets, owned or controlled by the Declarant or conveyed by the Declarant to the Association for the common use and enjoyment of the Owners.

1.03 "Declarant" shall mean Sundbird Development Inc., a Utah Corporation, and its successors and assigns who own the Property with the purpose of the development, investment and transfer of the Lots.

1.04 "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions as, from time to time, amended.

1.05 "Landscaping" shall mean improvements to lots that are provided by individual lot owners, according to minimum standards and guidelines of the declaration and as approved by the Architectural Control Committee.

1.06 "Architectural Control Committee" shall mean a group of at least three individuals who shall approve the size, quality, construction, materials, and placement of any mobile or manufactured home on a "Lot", and the placement of any fencing, storage sheds, carports or garages, and shall approve all landscaping plans.

1.07 "Lot" or "Lots" shall mean one or more plots of land, shown upon the Plat of the Property with the exception of the Common Area.

1.08 "Member" shall mean one who is a member of the Association pursuant to paragraph 3.01 herein.

1.09 "Modular Home" or "Site built Home" shall mean any permitted or approved one story modular or site built home with width, length, height, and type as required and established by Declarant or conforms with Federal Housing

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Administration standards or pursuant to the terms of this Declaration.

1.10 "Owner" shall mean the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers but excluding those having such interest merely as security for the performance of an obligation. In the case of Lots in which the fee simple title is vested of record in a trust deed pursuant to Utah Revised Statutes \_\_\_\_\_, legal title shall be deemed to be in the trustor.

1.11 "Plat" shall mean and relate to that map recorded in Book \_\_\_\_\_ of Maps, on Page \_\_\_\_\_ Records of Washington County, Utah, as from time to time amended.

1.12 "Property" shall mean that certain real property described in Exhibit "B" attached hereto, and such additions thereto as may be brought within the jurisdiction of the Association, together with all rights and privileges belonging or in any way pertaining thereto.

## ARTICLE II

### PROPERTY RIGHTS IN COMMON AREAS

2.01 USE AND BENEFIT. Each Owner shall have the nonexclusive right in common with all other Owners to use the Common Area for its intended purposes. Such right shall extend to each Owner and the agents, servants, tenants, family members and invitees thereof. Such right shall be subject to reasonable limitations and restrictions as may from time to time be promulgated by the Association and shall be subject to and governed by the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws.

Notwithstanding any other provision hereof to the contrary, Declarant shall be entitled to exclusive access to and occupancy of all or any portion of the Common Area, together with the right of access, ingress and egress, until such time as the construction thereof is complete and Declarant shall have certified the readiness of such Common Area or portion thereof to the Board of Directors.

2.02 INTEREST IN THE COMMON AREAS. Because it is necessary to preserve the rights of the Owners with respect to the use and management of the Common Area, upon conveyance of the Common Area by the Declarant to the Association, the Common Area shall remain undivided and no Owner shall have any right to bring any action for petition or sale thereof.

2.03 CONVEYANCE. When the documents evidencing the sales of ninety-five (95%) percent of the total Lots in the Property are recorded with the Washington County, Utah, Recorder's Office, Declarant will convey the Common Area, subject to the reservations hereinafter stated, to the

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Association, provided the Association has shown to the satisfaction of the Declarant or its designee its intention and ability to hold, maintain and operate the Common Area in a sound and businesslike manner; and in the event Declarant, in its sole and absolute discretion, deems the Association to lack the aforesaid ability or intent Declarant shall, in writing, notify the Association. In the event Declarant does convey the Common Area to the Association, the Association shall call a meeting of the Members ("Member(s)" defined in Paragraph 3.01 below) to elect, by a majority of the votes cast, five(5) persons to serve as directors on the Association Board of Directors. All directors, except for the directors named in the articles of incorporation of the Association and directors appointed to fill a vacancy in the board of directors named in such articles of incorporation, must be Lot owners in RidgePointe Estates. All directors shall thereafter be re-elected by the Association and Bylaws.

2.04 DECLARANT'S LIABILITY. Declarant shall not become a Member or become liable for the payment of any assessments or incur any liabilities whatsoever by virtue of its ownership of any of the Lots in the Property.

2.05 EARLIER CONVEYANCE. Notwithstanding any provision contained in this Article II to the contrary, the conveyance of the Common Area by the Declarant to the Association may be accomplished at an earlier time than scheduled in Paragraph 2.03 herein if Declarant, in its sole and absolute discretion, so decides and informs the Association in writing of such decision. In such event, the Association shall thereafter comply with the provisions of paragraph 2.03 above.

### ARTICLE III

#### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.01 MEMBERSHIP. Upon the recordation of a deed of any Lot in the Property from Declarant to any Owner, the Owner shall automatically become, regardless of whether or not the Owner has completely paid for his Lot, a member of the Association, hereinafter referred to as a "Member(s)") and he shall remain a Member until such time as his ownership of the Lot ceases. The acceptance of a deed to any of the Lots in the Property, the mere acquisition or rental of any of the Lots in the Property or the use of the Common Area by any person shall signify that person accepts and consents to this Declaration and to the Association's Articles of Incorporation, Bylaws, rules and regulations.

3.02 ADMINISTRATION. The administration of the Association shall be in accordance with this Declaration, the Articles of Incorporation and the Bylaws of the Association. All Members shall comply with Declaration and the Associations, rules and regulations. The failure by any Owner of any lot to comply with the same shall entitle the Association to pursue all available legal and equitable

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remedies.

3.03 VOTING. Each Member shall be entitled to one (1) vote in the Association for each Lot he owns, but in no event shall more than one (1) vote be cast for any (1) Lot. This voting right shall be exercised by the "Voting Owner" who shall be the Owner. If there are two or more Owners of a Lot and a dispute arises between them as to which shall be the Voting Owner, the Voting Owner shall be that Owner whose name first appears on the deed or conveyance of record for the Lot. A majority of the Voting Owners all constitute a quorum and any decision by the majority of the quorum present at any Association meeting shall be the act of the Association. An Owner may appoint a proxy to serve as the Voting Owner, in which case the Owner must provide the Association with written notice of the proxy 30 days before the proxy may vote in an Association meeting. The power herein conferred to designate a proxy as the Voting Owner and to revoke said designation may be exercised by the respective Owner or Owners, the Owner's guardian, or during the administration of the deceased Owner's estate. An Owner's status as a Voting Owner shall be deemed automatically revoked upon, (1) the sale of his Lot at a sheriff's sale or the execution of a deed in lieu of foreclosure resulting from a foreclosure of any bona fide mortgage or the sale of a Lot through the exercise of a power of sale under a bona fide mortgage or deed or trust, (2) transfer of record title to the Lot, (3) written notice to the Association of the death or judicial incompetency of the Voting Owner, or (4) written revocation of voting Owner status delivered to the Association by any Owner or Owners. Upon the appointment of a receiver by a court of competent jurisdiction in any foreclosure or sale pursuant to a bona fide mortgage, said receiver shall be deemed the Voting Owner of the respective Lot for the purpose of voting so long as they are legally acting as the receiver. If at any time a Lot is unrepresented by a Voting Owner, no vote shall be cast on behalf of such Lot until a Voting Owner is designated as provided herein; in such event, for voting purposes, the total number of Lots shall be deemed to have been reduced by the number of Lots unrepresented by a Voting Owner.

3.04 MAINTENANCE. The Association shall: (1) maintain, operate and otherwise manage the Common Area, (2) maintain and repair the private streets, common lighting facilities, landscaping, and all other improvements within the Common Area; (3) purchase and maintain policies of public liability and hazard insurance with respect to all parts of the Common Area pursuant to paragraph 6.01 below; (4) pay all ad valorem real property taxes and all special improvements or other assessments levied and assessed against all or part of the Common Area. In order to adequately perform the aforesaid duties, the Association shall have the right to contract with third parties.

#### ARTICLE IV

#### COVENANT FOR ASSESSMENTS OF COMMON EXPENSES

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4.01 ASSESSMENTS

(A) Whether or not Declarant has transferred the Common Areas to the Association, each Member of the Association shall pay to the Association a sum equal to the aggregate of the following multiplied by a fraction, the denominator of which is the actual number of improved lots and the numerator of which is one (1) (hereinafter the "Assessment")

(i) The actual or estimated cost of all repairs, replacement, maintenance and cleaning of the private streets;

(ii) The actual or estimated cost of operating and/or maintaining the Common Area, including but not limited to the swimming pool, therapeutic pool, exercise equipment, kitchen facilities, office, meeting rooms, storage areas, billiard rooms and equipment, card room, horse shoe and bocci ball courts, irrigation systems, etc.;

(iii) The actual or estimated cost of public liability insurance, hazard insurance and fidelity bonds carried by the Association in amounts and with such coverage as Declarant shall specify in writing and if the Common Area has been transferred to the Association, in such amounts and for such coverage as the Association shall establish from time to time;

(iv) The actual or estimated cost of general administration services and any other Association overhead including, but not limited to, legal and accounting fees and services;

(v) The actual or estimated amounts required to pay and discharge all other items of expense which are incident to the ownership of the Common Area including, but without limitation, real estate taxes and assessments, personal property taxes, excise taxes and any other governmental tax, imposition or levy;

(vi) Such sums as the Association shall determine to be reasonable and prudent for the establishment and maintenance of any necessary reserves for repair and maintenance of the Common Area and to meet any of the costs referred to in Paragraph (a) through (g) of this paragraph.

(B) Each Member's Assessment shall be the same regardless of whether a Home has been placed upon the Lot and regardless of whether the Owner is receiving any of the services for which the Assessment is levied.

(C) Until the Declarant has conveyed the Common Areas to the Association, all such assessments shall be paid to the Declarant or to such person or entity as the Declarant may direct.

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4.02 ASSESSMENT INTERVALS. Assessments for the amounts payable to the Association under Paragraph 4.01 shall be submitted to the Members by the Association each month or at such other regular intervals as may be fixed by the Association. Amounts owed on each Assessment shall be due and payable within ten (10) days immediately following the date the Assessment is deposited in the United States Mail addressed to the Member at the address shown in the Association records. If the Assessment is not paid within the aforesaid ten (10) day period, the Member shall be in default. Any amount in default, together with interest at the rate of eighteen percent (18%) per annum, shall constitute the personal obligation of the Owner of such Lot at the time such payment is due, and shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. The personal obligation for delinquent Assessments shall pass to the Owner's successor in title whether or not expressly assumed by him. If any Owner shall fail or refuse to make any monthly Assessment when due, the amount thereof, together with interest, costs and reasonable attorney's fees, shall constitute a lien on such Owner's Lot; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage or first deed of trust on the applicable Lot. If any lien for an unpaid Assessment prior to such date has not been extinguished by the process by which such first mortgagee, trustee or beneficiary under any first deed of trust acquired such title or possession, such first mortgagee, trustee or beneficiary shall not be liable for such unpaid Assessment and, upon written request to the Board of Directors by such first mortgagee, trustee or beneficiary such lien shall be released in writing by the Association. Except as herein provided for in the case of first mortgages or deeds of trust, any such liens shall be attached to the applicable Lot as of the date of the Assessment thereof and shall not be extinguished by any subsequent transfer of such Lot. Any person acquiring an interest in any Lot shall be entitled to a statement from the Association setting forth the amount of an unpaid Assessment, if any, and such person shall not be liable for, nor shall such statement, except for the Assessment which occurs and becomes due after the date thereof. The lien provided for in this paragraph may be foreclosed by the Association in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Utah.

(a) Each Owner shall pay his Assessment when due and may not exempt himself from liability for the Assessment by waiver or abandonment of the use and enjoyment of his Lot or Common Area.

(b) A Member subject to collection, lien foreclosure or power of sale proceedings pursuant to Paragraph 4.03 below shall be liable for all court costs, trustee fees, if applicable, and reasonable attorneys' fees and costs incurred by the Association or allowed by law in connection with the collection of the Assessment, any foreclosure or power of sale proceedings.

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4.03 DEFAULT REMEDIES. If any Assessment referred to in Paragraphs 4.01 and 4.02 is not available legal and equitable remedies provided to the Association under this Declaration, the Association may, to the extent permitted by law, discontinue furnishing services to the Lot owned by the applicable Member and may deny the occupants of such Lot, their guests and invitee the right to make use of the Common Area for so long as such Owner shall not remedy his default. This paragraph shall not affect or diminish the Owner's obligation to pay the Assessment levied by the Association after the discontinuance of any such services.

#### ARTICLE V

##### INSURANCE REQUIREMENTS

5.01 INSURANCE. The Association shall secure public liability insurance in such companies and in such amounts as approved by Declarant but in any event not less than \$2,000,000 for any one occurrence. Further, the Association shall immediately secure physical damage, fire, and extended coverage insurance on all insurable facilities including, but not limited to, the Clubhouse in such amounts as the Board of Directors of the Association shall determine but in any event not less than eighty percent (80%) of the full insurance value thereof. The original form of these said policies shall be delivered to Declarant. All such policies shall be maintained and continued in full force and effect until such time as Declarant has, in writing, released the Association from this requirement; provided, however, that these insurance requirements may be modified from time to time with written consent of Declarant or their assignee.

#### ARTICLE VI

##### ARCHITECTURAL CONTROL

6.01 ARCHITECTURAL COMMITTEE. The Association shall serve as the Architectural Control Committee (hereinafter the "Committee"). No structure, improvement, landscaping, modification, alteration or replacement may be commenced on the Property without the Committee's review and approval of detailed plans and specifications. All plans and specifications must comply with the minimum standards set forth in this Declaration. Failure of the Committee to approve or disapprove the plans and specifications within forty-five (45) days of their submittal shall be deemed an automatic approval, provided such plans and specifications shall not be inconsistent with the minimum standards, guidelines and provisions herein contained.

6.02 HOME REQUIREMENTS. No Home may be placed on any lot until it is approved in writing by the Committee as to size, condition and appearance. Said home must have complete sanitary facilities, including among other things a lavatory, toilet, wash basin, tub or shower and kitchen sink. The Home must be connected to water and sewer lines in conformity with

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state and Washington County health requirements. The Committee must approve the placement of each Home. When the Owner is prepared to place the Home on the Lot, he must give the Committee twenty (20) days advance notice and specify the dimensions of the Home. At that time the Committee will determine whether the Home is acceptable and if so the Committee will designate the exact placement of the Home on the Lot. Each Lot in the subdivision is specifically intended for and restricted to the size indicated on the Plat for such Lot. There shall be no variations in the designated standards set forth in the Plat. Under no circumstances shall any Home be less than twenty (20) feet wide.

6.03 AGE OF HOME. At the time a Modular Home is placed in the subdivision, no more than one (1) year shall have elapsed since it was manufactured. Prior to the placement of any Home on a Lot the Home shall be registered with the appropriate governmental authorities.

6.04 SIDING. The exterior of all homes shall be Stucco as approved by the Architectural Control Committee.

6.05 ROOF AND COLORING REQUIREMENTS. All Homes placed in the subdivision shall have Bar tile shingles with a color approved by the Architectural Control Committee. All roofs must be at least a 3/12 pitch. All Homes must be of an earthstone or pastel coloring that is compatible with the surrounding areas and approved by the Committee.

6.06 OTHER STRUCTURES. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one Home, a deck or porch, storage room, and garage or carport, all of which must be attached to the Home.

6.07 RAIN GUTTERS. All roofs must have full length rain gutters, where practical, and downspouts.

6.08 CARPORTS OR GARAGES. All Homes must have a covered carport or garage for not less than one (1) car. The carport or garage must be compatible with the Home's appearance and be no smaller than eleven by fifteen (11x15) feet. A complete drawing of the carport with specifications must be submitted to the Committee at the time the drawings for the Home's location are submitted, and must be approved by the Committee prior to placement of the Home on the Lot.

6.09 DECKS AND STEPS. All patios, porches and decks (hereinafter "Decks") must be roofed. All roofs must be attached to the Home and must be compatible with the Home's appearance. The Decks may not be smaller than the size established by the Committee on a Lot by Lot basis and must be skirted with the same material as the Home; the floors of the Decks must be wood or covered with outdoor carpet and must have approved steps, railings and handrails. Steps at the rear of the Home must be compatible with front steps and must have handrails.

6.10 LANDSCAPING. The front and rear yards of the Home

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must be landscaped in a manner acceptable to the Committee. Before the commencement of any planting, landscaping or major changes to existing landscaping, written plans for such shall be submitted to the Committee for approval and any landscaping approved by the Committee must be completed, weather permitting, within ninety (90) days of the Home Installation. Each home buyer shall be responsible to plant and maintain one curb side shade tree in the variety specified by the committee. An automatic sprinkling or irrigation system must be installed by each home owner so landscaping may be maintained on a year around basis. The tree and irrigation system shall be installed immediately after the home has been placed on lot and all garages, carports, porches and driveways have been constructed.

6.11 STORAGE ROOMS. Storage rooms must be attached to the rear of the Home and constructed of materials compatible with the Home's appearance.

6.12 AIR CONDITIONING SYSTEMS. Air conditioning units must be placed at the rear of the Home at ground level and must be adequately screened from view. Roof mounted evaporative coolers are allowed but must be the "low-profile" type with a thirty-four (34) inch maxim height. No duct work shall be allowed on roofs.

6.13 ADJUSTMENTS. The committee may allow reasonable variances in and adjustments to these restrictions if such are necessary to overcome practical difficulties and prevent unnecessary hardships, provided, however, that such variances or adjustments are granted in conformity with the intent and purposes hereof and provided that in every instance such variance or adjustment will not be materially detrimental or injurious to other property in RidgePointe Estates.

6.14 REGRADING AND DRAINAGE. No Lot surface or tract in said subdivision shall be regraded without the prior consent of the Committee. No owner shall in any way interfere with, destroy, or alter any drainage or flood control ditches or devices located on his Lot. It shall be the individual Owner's responsibility to maintain and protect drainage and flood control ditches or devices located on his Lot. Under no circumstances may any Owner divert water from his Lot on to another Lot or on to any Common Area.

6.15 LANDSCAPING DESIGN. The extent of Landscaping provided by the owner shall include all portions of lot not covered by other improvements and shall conform with landscape improvements of common area. Lawns are discouraged, except as approved by Architectural Control Committee and reviewed by project Landscape Architect to ensure against excessive wetting of expansive soils. Drought resistant or xeriscape plant materials are to be used, particularly in areas where drainage of irrigation water will impact soil stability. A minimum of 75% of landscaped area shall be improved with plants from an approved list, or plant types as approved by Landscape Architect and Architectural Control Committee. The

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Home Owners Association shall maintain all landscaped areas and bill the home owner for the maintenance costs.

## ARTICLE VII

### USE AND OCCUPANCY RESTRICTIONS

7.01 PETS. No household pets, or other animals or poultry may be kept on any Lot, except indoor pets as approved by the Declarant; provided, however, that such pets are not raised, bred or kept for commercial purposes. All pets must be leashed whenever outside the Home. All pet litter must be picked up immediately. The Association has the right to restrict the size and number of pets and to revoke permission to keep pets which annoy or disturb the peace and quiet or do injury to persons or property.

7.02 ACTIVITIES. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Association or any adjoining or neighboring Lot Owner.

7.03 SIGNS. All signs, including "For Sale" signs, may be displayed in said subdivision only with the Association's prior approval.

7.04 LAUNDRY. Drying clothes, etc. outside of the Home is allowed, as long as an "umbrella" type clothes line is used.

7.05 GARBAGE AND TRASH. All garbage and trash shall be placed in properly covered containers in the rear of the yard. At no time shall there be piles of refuse and junk on any lot.

7.06 ANTENNAS. No television or radio antennas, towers or discs may be erected on the Property without specific approval of the committee. All solar collectors must be non-reflective and approved, prior to installation, by the Committee. There shall be no outside loudspeakers of any kind.

7.07 RECREATIONAL VEHICLES AND VEHICLE MAINTENANCE. Recreational vehicles will be allowed on Lots only if they can be parked under the carport. No major repairs or maintenance shall be done in the subdivision on any vehicles. Major repairs, for the purpose of this paragraph, is defined as any repair requiring more than one (1) day to complete.

7.08 WOOD STORAGE. All firewood or other wood stored on a Lot shall be neatly stacked and stored in such manner as to be least visible from adjacent Lots and Common Area.

7.09 FAILURE TO MAINTAIN LOT. In the event any Lot is not maintained and kept clean as herein provided or as provided in the Association's rules and regulations, the Association may send the Owner written notice that his Lot is not being adequately maintained. If the Owner fails to take

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substantive steps toward adequately maintaining his Lot within fifteen (15) days of his receipt of the aforementioned written notice, the Association shall have the right to furnish the labor and/or materials necessary to bring the Lot, including improvements and landscaping thereon, to a standard which meets with the Association approval, in its sole discretion and then to maintain the Lot according to such standards. In such event, the Owner shall pay the Association an amount equal to all direct and indirect costs and expenses incurred by the Declarant or Committee in furnishing such labor and/or materials; the amount that the Owner is obligated to pay hereunder shall constitute a lien on such Lot and shall be payable within ten (10) days after the Owner is notified of the amount due and payable. In the event the Owner fails to pay the Association the amount owed pursuant to this Paragraph, the Association shall have the remedies set forth in Paragraphs 4.02 and 4.03 herein.

7.10 USE OF COMMON AREA. The Common Area shall be maintained and used so as not to constitute a nuisance to nearby Owners. All usage of the Common Area shall be in compliance with the applicable provisions of the rules and regulations of the Association.

7.11 SINGLE FAMILY, ADULT PURPOSE. The Property is hereby established as a senior, adult, mobile home community. All lots within RidgePointe Estates shall be used exclusively for single-family residential home purposes. At least one occupant or owner shall be an adult of fifty-five (55) years of age or more. The Board of Directors of the Association shall have the authority to establish separate rules concerning the maximum period during any calendar year during which (a) visitors 16 years of age and under, and (b) visitors over age 16 may visit on the Property. The restrictions contained in this paragraph 7.11 are solely for the benefit of the Owners and occupants of the Property and are not meant to discriminate against younger people, but rather to protect the rights and interest of senior adult Owners and occupants in maintaining their community.

7.12 NO FURTHER SUBDIVISION. Neither the Common Area nor any Lot shall be re-subdivided smaller than shown or delineated on the Plat.

#### ARTICLE VIII

#### EASEMENTS

8.01 RESERVATION OF EASEMENTS. Declarant expressly reserves for the use and benefit of itself, its heirs and assigns, all public utilities serving the Property and the Association an easement and right-of-way within the area of each of the private streets and within the areas of the public utility easements shown on the plat for the purpose of constructing and placing within and thereon wires, conduits, transformers and related and necessary items of equipment for the underground transmission of gas and electricity and for the construction, installation, operation and maintenance of

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water lines, sewer lines, drains, water pipes, telephone, television cable, or conduits under the surface of said streets and easements for any lawful purpose whatsoever.

8.02 UTILITY AND DRAINAGE EASEMENTS. Easements for the installation and maintenance of utilities and drainage facilities are as shown on the Plat. Within the easements, no structures shall be placed or permitted nor shall anything be done that may change or alter the direction or flow of drainage in the easements or which may obstruct or retard the flow of surface water through drainage channels or easements. All surface water shall be directed into these channels.

#### ARTICLE IX

##### GENERAL PROVISIONS

9.01 DECLARANT EXEMPTION. During the period of time that Declarant is developing and selling the Lots, Declarant shall be exempt from the limiting provisions of this Declaration.

9.02 CLUBHOUSE CONSTRUCTION. Declarant hereby declares his intention to start construction of the COMMON AREA CLUBHOUSE during the development of phase II of the project.

9.03 REMEDIES. In the event of any violation or threatened violation of any of the covenants herein, the Association or any Owner may bring an action at law or in equity seeking damages or injunctive relief. In the event the Association recovers judgment against any person for a violation or threatened violation of any of the covenants herein, the Association shall be entitled to recover from such person any court costs and reasonable attorney's fees and costs.

9.04 WAIVER. The failure by any Owner or the Association to enforce any restrictions, conditions, covenants or agreements herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto, nor shall such failure give rise to any claim or cause of action against the Association, Owner or Declarant. No waiver of a breach shall be construed to be a waiver of any other breach of the same or other provision nor shall the failure to enforce any one of the provisions hereof be construed as a waiver of any other provision.

9.05 FUTURE INSTRUMENTS. All instruments conveying or assigning any interest in all or part of the Property shall refer to this instrument and shall be subject to the covenants, restrictions, reservations, conditions and servitude herein contained as fully as though this instrument were therein set forth in full; provided, however, that the terms and conditions of this instrument shall be binding upon all persons affected by its terms regardless whether express

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reference is made to this instrument.

9.06 LIFE OF DECLARATION AND RENEWAL. All provisions of this Declaration, as the same may be amended in accordance with the terms hereof, shall remain in full force and effect until January 1, 2008, from which time they shall automatically be renewed and extended for successive periods of ten (10) years, unless a majority of the Owners, at or prior to the end of the initial term or any successive periods, change or terminate this Declaration in whole or in part by a written document which is filed of record.

9.07 AMENDMENT. Notwithstanding anything in Paragraph 9.05 to the contrary, for ten (10) years immediately following the date this Declaration is recorded, or until such time as 75% of the lots in the subdivision have been sold, this Declaration may be amended only by an instrument executed by the Declarant; such an amendment shall not be effective until it is recorded. Thereafter this Declaration may be amended only by an instrument executed by at least two-thirds (2/3) of the Owners; such an amendment shall not be effective until it is recorded.

9.08 SEVERABILITY. If any provision hereinabove contained or any portion thereof is invalid or void, such invalidity or voidness shall in no way affect any other provisions hereof.

9.09 EXPANSION. Declarant reserves the right to expand the project through the comparable development of adjacent land and incorporate said expansion land within this Declaration by specified reference thereto. Any such expansion shall be subject to all the terms and conditions of this Declaration.

9.10 GENDER. As used herein, the masculine shall include the feminine and neuter.

9.11 VACANT LOTS. All buyers of lots shall have up to three years to purchase or otherwise have an approved home installed on their lot.

IN WITNESS WHEREOF, Sunbird Development Inc., an Utah corporation, has executed this Declaration as of the day and year first above written.

9.12 All lots will receive slighty higher sewer fees to pay maintenance costs at sewer lift station.

SUNBIRD DEVELOPMENT INC.,  
an Utah corporation

by: Paul L. Bradley

Its: President

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State of Utah

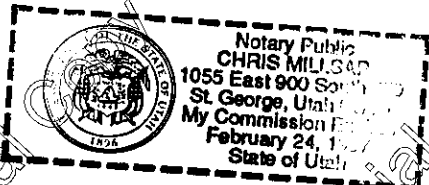
County of Washington

On the 7th day of DECEMBER 1994 A.D. personally appeared before me  
PAUL R. BRADLEY

who being by me duly sworn, did say each for himself, that he, the said  
PAUL R. BRADLEY

is the president, and he the said is the secretary  
of SUNBIRD DEVELOPMENT INC., a Utah Corporation  
Company, and that the within and foregoing instrument was signed in behalf of said  
corporation by authority of resolution of its board of directors, and said

PAUL R. BRADLEY and  
each duly acknowledged to me that said corporation executed the same and that the seal  
affixed is the seal of the said corporation.



*Chris Millsap*

My commission Expires: 2-24-97

Residing at: St. George, Utah