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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
ENSIGN PLACE PLANNED UNIT DEVELOPMENT**

THIS DECLARATION is made and executed this 2nd day of July, 1998 by Jaren L. Davis (hereinafter referred to as "Declarant.")

WHEREAS, Declarant is the record owner of that certain tract of Property more particularly described in Section 2 of this declaration. Declarant desires to create on said Property a residential Planned Unit Development with landscaped areas, open spaces, recreational areas and facilities and other Common Areas.

WHEREAS, the following Declaration is executed to effectuate the desire of Declarant to impose on the described Property mutual beneficial restrictions under a general plan or scheme of improvement for the benefit of each and all of the included units and of the Common Area and of the future owners of those Units and that Common Area as provided for in Utah Code Annotated Sections 57-8-1 to -35, known as the Utah Condominium Ownership Act.

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, 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 Declarant has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, ENSIGN PLACE HOMEOWNERS ASSOCIATION, INC.

**DECLARATION**

Declarant, the fee owner of the Property, makes the following declaration as to divisions, covenants, restrictions, limitations, conditions and uses to which the described Property and improvements, which will consist of twelve (12) single-family structures and appurtenances, may be put, specifying that this Declaration shall constitute covenants to run with the land and shall be binding on owner, and successors, heirs and assigns, and all subsequent owners of all or any part of the Property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

**Section 1. DEFINITIONS**

When used in this Declaration, the following terms shall have the meaning indicated. Terms used herein without definition shall have the meaning indicated. Terms used herein without definition shall have the meanings specified for those terms in Section 57-8-3 of the Utah Condominium Act or the Bylaws attached hereto as Exhibit B.

- A. Association shall mean and refer to Ensign Place Homeowners Association, Inc. A Utah nonprofit Corporation, which will include, but is not limited

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to, operation and maintaining the Common Areas within the Property, collecting and disbursing the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration.

- B. Board shall mean and refer to the board of trustees of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association.
- C. Declarant shall mean and refer to Jaren L. Davis, his successors and assigns
- D. Declaration shall mean this Declaration of Covenants, Conditions and Restrictions.
- E. Managing Agent shall mean and refer to any person or entity appointed or employed as the manager or managing agent by the Association.
- F. Member shall mean and refer to every person who holds membership in the Association.
- G. Mortgage shall mean any first mortgage, first deed of trust or trust deed or the act of encumbering any Unit or any property by a mortgage, trust deed or deed of trust; and Mortgagee shall mean a lender holding a first mortgage and any trustee or beneficiary of a first trust deed or deed of trust encumbering a Unit in the Planned Unit Development (P.U.D.) that has notified the Association of its status.
- H. Owner or Unit Owner shall mean and refer to the person who is the owner of a Unit in fee simple and an undivided interest in the fee simple estate of the Common Areas and facilities.
- I. Plat shall mean and refer to that subdivision plat of Ensign Place Townhomes, executed and acknowledged by Declarant on September 3, 1997, prepared and certified by Neff Engineering (a duly registered Utah Land Surveyor, holding Registration number RLS172065), consisting of one sheet and filed for record in the office of the County Recorder of Salt Lake County, Utah on \_\_\_\_\_, 1998, in Book \_\_\_\_, Page \_\_\_\_, as Entry No. \_\_\_\_, creating separately numbered Units.
- J. Property shall mean and refer to the entire tract of real property covered by this Plat, a description of which is set forth in Section 2 of this Declaration.
- K. Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence.

## Section 2. PROPERTY DESCRIPTION

- A. Submission of Property. Jaren L. Davis ("Declarant"), owner in a fee simple of the land described in Exhibit A annexed hereto and hereby submits the land, together

with all improvements, easements, rights and appurtenances thereunto belonging ("Property") to the provisions of Utah Code Annotated Sections 57-8-1 to -35, known as the Utah Condominium Ownership Act.

B. Reservations. Declarant hereby reserves such easements and rights of ingress and egress over, across, through, and under the above-described Property and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assigns of Declarant (in a manner which is reasonable and not inconsistent with the provision of this Declaration):

1. to construct a Unit on the Property and to improve the Common Areas with such facilities (including, but not limited to, roads, walkways, and various landscaped areas) designed for the use and enjoyment of all Members as Declarant or and such assignee may reasonably determine to be appropriate;
2. to create and construct such Common Areas as Declarant or as such assignee may reasonably determine to be appropriate;
3. to access any Unit as provided by the Bylaws. In case of emergency, such entry shall be immediate whether or not the Unit Owner is present at the time. Further, until the expiration of the warranty period, such entry shall be permitted to perform warranty-related work (for the benefit of the Unit being entered, other Units, or the common elements) whether or not the Unit Owner consent or it present at the time;
4. to maintain on the Property advertising signs that comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of the Declarant. The Declarant shall have the right to restrict the use of certain Common Area parking spaces for sales purposes and to use those spaces for sales purposes. Further, Declarant shall have the right to erect temporary offices on certain Common Areas for models, sales, management, customer service and similar purposes. This easement shall continue until the Declarant has conveyed all Units in the Planned Unit Development to unit owners other than the Declarant; and
5. to grant and reserve easements and rights-of-way through, under, over and across the Property for construction purposes, and for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities.

### Section 3. BUILDINGS ON THE LAND, UNIT BOUNDARIES

I. Units. The location of each Unit on the Property and its dimensions are shown on the "Plat" attached as Exhibit A hereto. Also described on Exhibit A

hereto is a list of all Units, their identifying numbers, location, type and the Common Area Interest appurtenant to each Unit.

- II. Unit Boundaries. The boundaries of each Unit are as follows:
1. Upper boundary: the horizontal plane of the bottom surface of the wood joists of the ceiling except where there is a dropped ceiling in which locations the upper boundary shall be the horizontal plane which includes the top side of the plasterboard of the dropped ceiling.
  2. Vertical (perimetric) boundaries: the vertical boundaries of the Units shall be the vertical plane that includes the back surface of the plasterboard of all walls bounding the Unit extended to intersections with each other and with the upper boundary.
- III. Maintenance Responsibilities. Notwithstanding the ownership of the various portions of the common elements and the Units by virtue of the foregoing boundary description, the provisions of Sections 6 and 9 of this Declaration shall govern the division of maintenance and repair responsibilities between the Unit Owner and the Association.

#### Section 4. COMMON AREAS AND FACILITIES

Common Areas. The undivided interest in the Common Areas and facilities established by this document and described in Exhibit A attached hereto, and which shall be conveyed with each respective Unit, is as follows:

<u>Unit</u>	<u>Percentage</u>
1	8.33%
2	8.33%
3	8.33%
4	8.33%
5	8.33%
6	8.33%
7	8.33%
8	8.33%
9	8.33%
10	8.33%
11	8.33%
12	8.33%

The above respective undivided interests established and to be conveyed with the respective Unit cannot be changed, and the Owner of the Unit, and successors, heirs, assigns, and grantees, covenant and agree that the undivided interest in the Common Areas and facilities and the fee titles to the respective Unit conveyed shall not be separated or separately conveyed. Each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit, even though the description in the instrument of conveyance of encumbrance may refer to the fee title to the Unit and the real property beneath each unit as shown in exhibit A attached hereto.

#### Section 5. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

- A. Membership. Every owner upon acquiring title to a Unit shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Association with respect to such Unit shall

automatically cease and the successor owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Unit.

- B. Voting Rights. Members shall be entitled to one vote for each Unit in which the interest required for membership in the Association is held.
- C. Multiple Ownership Interests. In the event there is more than one owner of a particular Unit, the vote relating to such Unit shall be exercised as such owners may determine among themselves, but in no event shall more than one vote be cast with respect to any Unit. A vote casted at any Association meeting by any of such owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Unit concerned unless an objection is made at the meeting by another owner of the same Unit, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.
- D. Record of Ownership. Every owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Unit. Each owner shall file a copy of such conveyance document (or contract) with the secretary of the Association, who shall maintain a record of ownership of the Units. Any owner who mortgages his Unit or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the record of ownership. Any cost incurred by the Association in obtaining the information about an owner as specified herein which is not furnished by such owner shall nevertheless be at the expense of such owner and shall be reimbursed to the Association as a "reimbursement Assessment" in accordance with the provisions of Section 7.

## Section 6. DUTIES AND POWERS OF THE ASSOCIATION

- A. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, Bylaws or this Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the owners and the maintenance and improvement of the Property:
  - 1. The Association shall accept all owners as members of the Association.
  - 2. The Association shall maintain, repair and replace all landscaping and improvements in the Common Areas, including but not limited to the maintenance of all exterior trees, shrubs, grass, private roads and other Common Area improvements. Association shall have no obligation to perform any exterior maintenance and/or repair of any part of a Unit.

- a. As provided in this Section, each owner shall have the obligation to provide exterior maintenance of his Unit, including but not limited to painting, repair, replacement and care of roofs, gutters, down spouts, exterior building surfaces. Each owner shall paint, repair and otherwise maintain all mechanical devices, including but not limited to, intercoms and appurtenant electrical, plumbing and heating, ventilating and air conditioning systems.
  - b. In the event that the need for maintenance or repair of Common Areas as specified above is caused through the willful or negligent acts of an owner, or through the willful or negligent acts of the family, guests or invites of an owner, the Board may cause such repairs to be made by the Association and the cost of such exterior maintenance (and administrative expenses equal to ten percent (10%) of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Section 7), to which such Unit is subject. In the event of the need for maintenance or repair of the exterior of a Unit and in the event such maintenance and/or repair is not made after thirty (30) days written notice to the owner of such Unit, the Board may cause such maintenance and repairs to be made by the Association and the cost of such exterior maintenance (and administrative expenses equal to ten percent (10%) of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Section 7) to which such Unit is subject.
3. The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration and Bylaws attached hereto as Exhibit
  4. The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. Any managing Agent may be an independent contractor and not an agent or employee of the Association.
- B. Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and its Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect

assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

1. The Association shall have the power and authority at any time and from time to time and without liability to any owner for trespass, damage or otherwise, to enter upon any Unit for the purpose of maintaining and repairing such Unit or any improvement thereon if for any reason the owner fails to maintain and repair such Unit or improvement, or for the purpose of removing any maintained upon such Unit in violation of Section 10 of this authority from time to time in its own name, on its own behalf or in the name and behalf of any owner or owners who consent thereto, to commence and maintain actions and suits to constrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.
  
2. In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon no less than ninety (90) days written notice, the Association shall have the power and authority (a) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and to obtain, construct and pay for or to otherwise provide for:
  - a. Construction, maintenance, repair and landscaping of the Common areas (and exterior repairs of Units to the extent necessitated by the failure of owners of such Units) on such terms and conditions as the Board shall deem appropriate;
  - b. Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board and the owners;
  - c. Such utility services, including (without limitation) water (for common area), sewer, trash removal, snow removal and electrical as the Board deems desirable.
  - d. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

- e. Fire, police and such other protection services as the Board may deem desirable for the benefit of the owners or any of the Property; and
  - f. Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.
3. The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000), nor the power to sell, convey, mortgage or encumber any Common Areas.
- C. Association Rules. The Board, from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the property; (e) the use of Units for business or rental purposes; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents. Rules and Regulations adopted by the Board may be enforced in accordance with the provisions of Section 9, Paragraph M.
- D. Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee or the Managing Agent.

## Section 7. ASSESSMENTS

- A. Personal Obligation and Lien. Each owner shall, by acquiring or in any way becoming vested with his interest in a Unit, be deemed to covenant and agree to pay to the Association the special and Reimbursement Assessments, annual and special assessments and his pro rata share of all taxes levied on the Common Areas managed by the Association, together with late payment fees, interest and costs of collection, including reasonable attorney's fees if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Unit with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the owner or owners of such Unit at the time the assessment falls due. No owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Unit at the time of the



conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

- B. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents or the Development including, but not limited to, maintaining aesthetic and market values of the Property and Units located thereon. The use made by the Association of funds obtained from assessments may include payment of the cost of: insurance on the Common Areas; maintenance, repair and improvements of the Common Areas, establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance and repairs and replacement of those elements of the Common Areas that must be replaced on a periodic basis.
- C. Basis and Maximum of Annual Assessments. Until January 1, of the year immediately following the conveyance of the first Unit to an owner, the maximum annual assessment shall be the sum of \$1,800, payable in equal monthly installments.
1. From and after January 1, of the year immediately following the conveyance of the first Unit to an owner, the maximum monthly assessment may be increased effective January 1, of each year by the Board of Directors without a vote of the membership, provided that any such increase shall not be more than twenty percent (20%) of the previous year's assessment. Such monthly assessment shall continue in effect for the following twelve (12) months, which period shall be deemed to be the assessment period.
  2. From and after January 1, of the year immediately following the conveyance of the first Unit to an owner, the maximum regular assessment may be increased by the Board of Directors in an amount greater than provided for in subsection (1) hereof for the next succeeding twelve (12) months, provided that any such change shall have the approval by vote or written assent of a majority of the Member.
  3. After consideration of current maintenance costs and future needs of the development, the maintenance assessment may be decreased by a vote of not less than two-thirds (2/3) of the owners present, either in person or by proxy and entitled to vote at any duly constituted meeting for such purpose.
- D. Special Assessments. From and after the date set under Paragraph H of this Section, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being

fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of the Common Areas. Any such special assessment must be assented to by a majority of the votes of the membership which owners present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of such meeting shall be sent to all owners at least ten (10) days but not more than thirty (30) days prior to the meeting date.

1. The life of the private street is estimated to be ten to twelve years. The cost of repairing the street when repairs are needed should be approximately fifteen thousand dollars (based on costs in 1998).

E. Quorum Requirements. The quorum at any meeting required for any action authorized by paragraphs C or D above shall be as follows: at the first meeting called, the presence of owners of or membership shall constitute a quorum. If a quorum is not present at the first meeting, another meeting may be called (subject to the notice requirements set forth in Paragraph D above) at which a quorum shall be sixty percent (60%) of all the votes of membership. If a quorum is not present at the second meeting, another meeting may be called (subject to the notice requirements set forth in Paragraph D above) at which a quorum shall be forty percent (40%) of all the votes of membership. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

F. Special Assessment on Specific Unit. In addition to the monthly assessment and any special assessment authorized pursuant to Paragraphs C and D above, the Board may levy at any time Special Assessments (a) on every Unit especially benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the owner of the Unit to be charged; (b) on every Unit the owner or necessitating repairs; and ( c ) on every Unit as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to this Declaration (all or part of the foregoing being sometimes referred to as "Reimbursement Assessments"). The aggregate amount of any such Special Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Units according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Special Assessment against the Units benefited.

G. Uniform Rate of Assessment. All monthly and special assessments authorized by Paragraphs C and D above shall be fixed at a uniform rate for all Units; provided, however, that until a Unit has been occupied for the first time for residential

purposes, the monthly assessment applicable to such Unit shall be one third (1/3) of the monthly assessment which would otherwise apply to such Unit. In the event that, if assessed fees collected by the Association fail to adequately meet Association expenses, then the owner of the Unit (if one exists) or the Declarant (if no owner exists) must put sufficient capital up to the full assessed share applicable to the specific Unit; provided, however, that Declarant shall not be obligated to contribute to any reserve fund(s) which may be provided by the Association. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the owners of all Units adversely affected.

- H. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Units as of the first day of the second month following the date that the initial sale of the Unit concerned is closed. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessments, the Association shall give each owner written notice of the amount and first due date of the assessment concerned.
- I. Certificate Regarding Payment. Upon the request of any owner or prospective purchaser or encumbrancer of a Unit and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Units are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.
- J. Effect of Nonpayment Remedies. Any assessment (whether monthly, special or Reimbursement Assessment) not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Unit. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1 ½%) per month plus a \$25.00 late fee; and the Association may bring an action against the owner who is personally liable or may foreclose its lien against the Unit, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.
- K. Subordination of Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first mortgage to a lender; and the holder of any such first mortgage or purchaser who comes into possession of a Unit by virtue of the foreclosure of such first mortgage or the exercise of a power of sale under such first mortgage or the exercise of a power of sale under such first mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Unit; provided that, to the extent there are any proceeds of the sale on foreclosure of such first mortgage or by exercise of such

power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Unit from the lien of any assessment thereafter becoming due.

## Section 8. PROPERTY RIGHTS AND CONVEYANCES

- A. The Common Areas Shall Remain Undivided; no owner shall bring any action for partition, if being agreed that this restriction is necessary to preserve the rights of the owners in the operation and management of the property. Each owner shall have the nonexclusive right of use and enjoyment in and to the Common Areas. Such right shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, contract purchaser or other person who resides on such owner's Unit.
- B. Limitations on Use of Common Areas. An owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:
1. The right of the Association to govern by rules and regulations the use of the Common Areas by the owners so as to provide for the enjoyment of the Common Areas by every owner in a manner consistent with the preservation of quiet enjoyment of the Units by every owner, including reasonable limitations on the number of guests per owner who at any given time are permitted to use the Common Areas;
  2. The right of any governmental or quasi-governmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across any street, parking area, walkway or open area contained within the Common Areas for the purpose of providing police and fire protection any other governmental or municipal service; and
  3. The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be assented to in writing by (i) all holders of first Mortgages secured by Units and (ii) the owners of one-hundred percent (100%) of the Units (not including Units owned by Developer).
- C. Reservation of Access and Utility Easements. Declarant reserves easements for access, electrical, gas, communications, cable television and other utility purposes and sewer, drainage and water facilities (whether servicing the Property or other properties or both) over, under, along, across and through, together with the right to grant to the County of Salt Lake or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms

and conditions required by the grantee thereof for such easement rights; provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the owners and the Association and those claiming by, through or under the owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easements rights to the approximate condition of the Property immediately prior to the exercise thereof. Nothing herein shall preclude Declarant from entering into a Private Street Agreement with appropriate governmental agencies on terms and conditions required by it for the express purpose of obtaining a street name and numbers for Units and to provide appropriate governmental agencies with such rights of access as shall be necessary for the CIO proper exercise of its police powers.

- D. Easements for Construction and Development Activities. Declarant reserves easements and right of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance and to post such signs and advertisements as may be reasonably incident to or necessary for the (a) construction of Units; (b) improvement of the Common Areas and construction, installation and maintenance thereof, roads, walkways, buildings, structures, landscaping and other facilities designed for the use and enjoyment of some or all of the owners; (c) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roads, walkways and other facilities planned for dedication to appropriate governmental authorities; and (d) the marketing and sale of a Unit or Units.

#### Section 9. USE RESTRICTIONS

- A. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Units.
- B. Use of Units. All Units are intended to be improved for residential occupancy and are restricted to such use. Except as provided herein, each Unit shall be used only as a single-family residence. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any Unit, without the prior written consent of the Board. In considering any request for use of a Unit for other purposes, the Board may take into consideration in granting or denying such approval the additional use intended for such Unit, whether or not employees other than owner will be working at the Unit, whether or not customers or clients will be frequenting the Unit and such other items as the Board shall deem appropriate. No Unit shall be used, occupied or altered in violation of law, so as to jeopardize the support of any other Unit, so as to create a nuisance or interfere with the rights of any owner, in a way which would result in an increase in the cost of any

insurance covering the Common Areas or other Units, or in a way which would result in an increase in potential liabilities to the Association or other owners.

- C. Parking and Recreational Vehicles. Except for temporary and guest parking in accordance with rules and regulations established by the Board (which rules and regulations shall not permit overnight parking on streets), each owner shall be required to park automobiles and other vehicles in garages and owners shall not be permitted to maintain or park additional automobiles or vehicles on the streets in the Development or the Common Areas. No boats, trailers, large trucks, or commercial vehicles belonging to owners or other residents of the Property shall be parked on the streets in the Development or the Common Areas, except temporary parking which shall be permitted in accordance with the rules and regulations adopted by the Board. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Unit, street or other Common Areas, except that these restrictions shall not apply to emergency or short term (not exceeding seventy-two (72) hours) repairs and maintenance to vehicles, all of which shall be performed inside garages.
- D. Antennas, Exterior Appliances, Etc. Without prior written approval of the Board, no antenna for radio or television; laundry, bedding, garment of other like item, shall be placed within the Common Areas, or outside of any Unit. No such item placed within any Unit shall be located so as to be readily visible from the Common Areas.
- E. Common Areas. The Common Areas of the Development shall be improved and used only for the following purposes:
1. Vehicular and pedestrian access to and from and movement within the Development, and space for temporary vehicular parking.
  2. Recreational use by owners and their guests.
  3. Beautification of the Development.
  4. Privacy for the owners.
  5. Such other uses as shall be determined from time to time by the Board for the benefit of members of the Association. Following consultation with the Architectural Control committee.
- F. Insurance. No use shall be made of any Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each owner shall be responsible for securing insurance, unless the Association elects to obtain homeowners special form coverage insurance for all owners of Units. Each homeowner's coverage shall specifically include an endorsement covering activities upon and risks associated with the

Common Areas without any requirement for contribution by the Association or its insurance carriers.

- G. Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in or adjacent to any Unit, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Unit or appurtenant structures.
- H. Maintenance and Repair. No building or structure upon any Unit shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Architectural Control Committee, each such building or structure at all times shall be kept in good condition and adequately painted or otherwise finished. In explanation of the foregoing and not in limitation thereof, each owner shall provide exterior maintenance to his Unit and all Limited Common Areas appurtenant thereto, including but not limited to, painting, repair, replacement and care of roofs, gutters, down spouts, exterior building surfaces and landscaping, if any, installed by owner and his predecessor in title. Failure to perform such maintenance and repair may result in a Reimbursement Assessment. No owner shall modify any existing structure upon any Unit without satisfaction of the conditions set forth in Section 10.
- I. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an owner upon or adjacent to any Unit, so as to render such Unit or portion thereof unsanitary, unsightly, offensive, or detrimental to other owners of the Development. No Unit shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Units. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Units or on the exterior of Units.
- J. Right of Entry. During reasonable hours and with advance notice, any member of the Architectural Control Committee or any member of the Board, or any officer or authorized representative of any of them, shall have the right to enter upon and inspect any building, site, Unit and the improvements thereon to ascertain whether or not the rules and regulations of the Board or of the Association have been or are being complied with. Notwithstanding the foregoing, and excepting circumstances perceived to be an emergency, no entry shall be made of any Unit without the prior affirmative vote of the Board authorizing the same. Nothing herein shall preclude the Association or its agents from entering a Unit for the purposes set forth in Section 6.
- K. Signs. With the exception of such signs as shall be permitted in accordance with the provisions of Section 2, no signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Unit except:
  - 1. Such signs as may be required by legal proceedings;

2. Residential identification signs of a combined total face area of seventy-two (72) square inches or less for each Unit; or
3. A "For Sale" sign, to the extent permitted by the Board.

Any sign or similar device erected in accordance with the provisions hereof of Section 2, must comply with all applicable zoning ordinances.

- L. Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained so as not to be visible from neighboring Units except to make them available for collection and then only for the shortest time necessary to effect such collection. Each owner must at all times and at his expense provide garbage cans and plastic liners therefore.
- M. Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:
  1. Declarant, so long as it has any interest in any of the Property;
  2. Any owner; or
  3. The Association, by its Board.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

#### Section 10. ARCHITECTURAL CONTROL

- A. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Committee the function of which shall be to ensure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of owners. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.
- B. Submission to Committee. No Unit, accessory or addition to a Unit which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting with a different color or refurbishing of the exterior of any Unit, nor of any patio enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefore have first been submitted to and approved by the Committee and, if necessary, building permits obtained from applicable governmental agencies.
- C. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to ensure that all improvements, construction, landscaping and alterations on Units within the Property conform to and harmonize with existing



surroundings and structures. In this regard, the Committee will necessarily render decisions in part or in whole on aesthetic judgments and such decisions shall nevertheless be binding upon all concerned.

- D. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. Submission shall be deemed to have been made only in the event applicant obtains from a Committee Member a signed receipt specifying the date and material submitted. In the event the Committee fails to take any action within such period, it shall be deemed to have approved the material submitted.
- E. Construction. Once begun, any improvements, construction, landscaping or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy unimproved portions of the Common Areas in the vicinity of the activity. In the event of noncompliance with the provisions of this Section, the Board may determine to cause such item to be completed and the cost of the same shall become a Reimbursement Assessment upon such Unit.
- F. Liability for Damages. The Committee shall not be held liable for damages by reason for any action, inaction approval or disapproval by it with respect to any request made pursuant to this Section 10.
- G. Exception for Declarant. The foregoing provisions of this Section 10 shall not apply to any improvement, construction, landscaping or alteration which is carried out by Declarant on any Unit or on any part of the Common Areas and which occurs at any time during the three (3) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.
- H. Declarant's Obligation. Declarant hereby covenants in favor of each owner that all Units erected by it and all improvements of the Common Areas accomplished by it in the Development (i ) shall be architecturally compatible with respect to one another; and (ii) that on or before three (3) years from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, there shall be substantially completed and usable all Common Areas of the Development, all approximately in the locations shown on the Plat.
- I. Governmental Approval. Owners, the Board of Trustees and the Committee acknowledge that Ensign Place P.U.D. obtained approval for the Development from the Salt Lake City Board of Adjustment and any modifications to the approved Plan are subject to the review and approval of the Board of Adjustment.

## Section 11. INSURANCE

- A. Liability Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Bests' Key Rating Guide a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Common Areas and areas managed by the Association by activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the County of Salt Lake nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any owner because of negligent acts of the Association or other owners and a cross-liability endorsement pursuant to which the rights of the named insurers as between themselves are not prejudiced. The Policy shall provide that the Policy may not be canceled by the insurer unless it gives at least 180 days prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the owners to insure their personal liability for their own benefit at their own expense.
- B. Additional Insurance: Further General Requirements. The Board may also procure insurance which shall insure the Common Area and the Association or the owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:
1. a waiver of the insurer's right of subrogation against the Association, the owners and their respective directors, officers, agents, employees, invitees and tenants;
  2. that it cannot be canceled, suspended or invalidated due to the conduct of any particular owner or owners;

3. that it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand of not less than one hundred and eighty (180) days that the defect be cured; and
4. that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the owners.

C. Fidelity Coverage. If the Board elects, the Association or Property Manager shall maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association and all other (including volunteers) who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall:

1. name the Association as an obligee;
2. be written in an amount based upon the best business judgment of the Association and shall not be less than the estimated maximum of funds, including reserve funds in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months assessment on all Units plus reserve funds; and
3. Contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition or "employee" or similar expression.

D. Review of Insurance. The Board shall periodically and whenever requested by forty percent (40%) or more of the owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the owner of each Unit and to the holder of any Mortgage on any Unit who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any owner.

E. Units Not Insured by Association.

1. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Unit and acts and events thereon. Accordingly, owners of Units in the Development shall obtain fire, extended coverage and liability insurance to the full replacement value of all Units.
2. If the Units are to be insured under a blanket or master type casualty insurance policy maintained by the Association, which shall

be permitted, then such policy shall insure the Units with general liability, fire and extended coverage for the full insurable value, with replacement cost coverage, and agreed value endorsement. Such policy or policies shall also contain such other coverage and endorsements are as customary for Units of the type in this Development in the State of Utah and meet all other requirements as may be required from time to time by the Mortgagees or their designees.

## Section 12. CONDEMNATION

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefore, any proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Unit is eliminated, the Board shall disburse that portion of the proceeds of the condemnation award allocable to the interests shall appear, after deducting the proportionate share of said Unit in the cost of debris removal and after deducting any assessments upon such Unit due the Association.

## Section 13. RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first Mortgagees shall be in effect:

A. Preservation of Regulatory Structure and Insurance. Unless the owners of at least eighty percent (80%) of the Units (not including Units owned by Declarant) and such owners first mortgagees, if any, shall have given their prior written approval, the Association shall not be entitled:

1. by act or omission to change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of Units, the exterior maintenance of Units, or the upkeep of lawns or planting on the Property; and
2. to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of improvements on the Common Areas.

This Paragraph A may be amended as provided in Paragraph B of Section 14, hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

B. **Preservation of Common Areas; Change in Method of Assessment.** Unless the Association shall receive the prior written approval of (i) all first mortgagees of Units and (ii) the owners of at least eighty percent (80%) of the Units (not including Units owned by Declarant) the Association shall not be entitled:

1. by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as hereinbefore reserved;
2. to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Unit or the owner thereof.

This Paragraph B may be amended as provided in Paragraph B of Section 14, hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

C. Notice of Matters Affecting Security. The Board shall give written notice to any first mortgagee of a Unit requesting such notice whenever:

1. there is any default by the owner of the Unit subject to the first Mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within sixty (60) days after default occurs; or
2. damage to the Common Areas from any one occurrence exceeds \$10,000; or
3. there is any condemnation or taking by eminent domain of the Unit subject to Mortgage or of the Common Areas; or
4. any of the following matters come up for consideration or effectuation by the Association:
  - a. Abandonment or termination of the Development established by this Declaration; or
  - b. Material amendment of the Declaration or the Articles or Bylaws of the Association.

D. Right to Examine Association Records. Any first mortgagee shall have the same right to inspect the books and records of the Association; provided that the foregoing shall not be deemed to impose upon the Association any obligation to cause special books, records or financial statements to be

prepared or to have the right to receive, upon written request, copies of such financial statements as any exist from time to time.

- E. Right to Pay Taxes and Charges. First mortgagees may jointly or singly pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

#### Section 14. MISCELLANEOUS

- A. Notices. Any notice required or permitted to be given to any owner under the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered to if mailed, registered or certified mail, postage prepaid, return receipt requested, to the person named as the owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Architectural Control Committee (exclusive of submissions provided in Section 10 which submissions may be delivered to a Member of the Committee) may be given by delivering or mailing the same to the Managing Agent or any member of the Architectural Control Committee, or the Board, as the case may be.
- B. Amendment. Except as provided below or in Section 13, this Declaration may be amended by:
1. the affirmative vote of a majority of the owners,
  2. the written consent of Declarant, if such amendment is adopted at any time when Declarant holds membership in the Association; and
  3. the filing of an instrument for record in the office of the County Recorder of Salt Lake County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of a majority of the owners and, if required, has the written consent of Declarant.
- C. 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 or number of the owners, whether present or represented by proxy at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from owners entitled to cast at least the stated percentage or number of all membership votes outstanding in connection with the class of membership concerned. The following addition provisions shall govern any application of this Paragraph C :

1. All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by the owner.
2. The total number of votes required for the application or approval shall be determined as of the date on which the last consent is signed.
3. Except as provided in the following sentence, any change in ownership of a Unit which occurs after a consent has been obtained from the owner thereof shall not be considered or taken into account for any purpose.
4. Unless the consent of all owners whose memberships are appurtenant to the same Unit are secured, the consent of none of such owners shall be effective.

D. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

E. Interpretation. The captions which precede the Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both genders. The invalidity or un-enforceability of any portion of this Declaration shall not affect the validity, construction and enforcement of this Declaration.

F. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitude, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit, their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each owner or occupant of a Unit shall include the plural, the plural shall include the singular, and any gender shall include both genders. The invalidity or un-enforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall govern the validity construction and enforcement of this Declaration.

G. Duration. The covenants and restrictions of this Declaration shall remain in effect for a term of twenty (20) years from the date this Declaration is filed in the office of the County Recorder of Salt Lake County, Utah, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument filed in the office of the County Recorder, executed by any two officers of the Association,





EXHIBIT B  
BYLAWS  
OF  
ENSIGN PLACE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I  
NAME AND LOCATION

The name of the corporation is Ensign Place Homeowners Association, Inc. (Hereinafter the Association'). The initial principal office of the Corporation in the State of Utah shall be located at 2845 E. Palma Way, Salt Lake city, Utah 84121, but meetings of Association and trustees may be held at such places within the State of Utah, County of Salt Lake, as may be designated by the Board of Trustees.

ARTICLE II  
DEFINITIONS

Terms used herein without definition shall have the meanings specified for those terms in the Declaration to which these Bylaws are attached, or if not defined therein, the meanings specified for those terms in Section 57-8-3- of Utah Condominium Ownership Act. The following terms have the following meanings:

- A. Common Areas shall mean and refer to all property in which all owners own an undivided interest and which is designated for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto.
- B. Common Area Interest shall mean the number assigned to each unit in Section 4 of the Declaration that establishes each units undivided interest in the he common areas, common expenses and common profits in the Association.
- C. Ensign Place P.U.D. or the Development at any point in time shall mean, refer to, and consist of the Property as described in Section 2 of the Declaration and all improvements thereon.
- D. Declarant Control Period shall mean the period prior to the date on which units to which sixty percent (60%) or more of the aggregate Common Area Interests appertain have been conveyed to unit owners other than the Declarant. The calculation of Common Area Interest shall be based, at any given time, on the Common Area Interests to be assigned to all units.

**ARTICLE III  
MEETING OF MEMBERS**

A. Annual Meetings. The first annual meeting of the Association shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Association shall be held on the same day of the same month of each year thereafter, at the hour of 8:00 o'clock, p.m. If the day for the annual meeting of the Association is a legal holiday, and the Board of Trustees has previously determined that meeting on such legal holiday is inconvenient or impractical, the meeting will be held at the same hour on the first day following which is not a legal holiday.

B. Special Meetings. Special meetings of the Association may be called by or at the request of the president or by the Board of Trustees, or upon written request of the members of the Association who are entitled to vote forty percent (40%) of all of the votes of the Association.

C. Notice of Meetings. Written notice of each meeting of the Association shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereafter addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

D. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, fifty percent (50%) of the votes of the Association shall constitute a quorum for any action except as otherwise provided in the he Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Association entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

E. Proxies. At all meetings of the Association, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Unit.

**ARTICLE IV**  
**BOARD OF TRUSTEES: SELECTION AND TERM OF OFFICE**

- A. Number. The initial Board of Trustees shall consist of three (3) individuals, all of whom shall be designated by the Delcarant. Thereafter, the affairs of the Association shall be managed by a Board of Trustees of not less than three (3) individuals and not more than Twelve (12) individuals who may not be members of the Association.
- B. Term of Office. At the first annual meeting, the members shall elect the trustees for a term of one year; each annual meeting thereafter the members shall elect the trustees.
- C. Removal. Any trustee may be removed from the Board, with or without cause, by a simple majority vote of the members of the Association. In the event of death, resignation or removal of a trustee, his successor shall be selected by the remaining trustees and shall serve for the unexpired term of his predecessor.
- D. Compensation. No trustee shall receive compensation for any service he may render to the Association. However, any trustee may be reimbursed for his actual expenses incurred in the performance of his duties upon approval by the Board of Trustees.
- E. Action Taken Without a Meeting. The trustees shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of the all the trustees. Any action so approved shall have the same effect as though taken at a meeting of the trustees.

**ARTICLE V**  
**NOMINATION AND ELECTION OF TRUSTEES**

- A. Nomination. Nominations of trustees will be made in writing to the president of the Association within 30 days prior to the annual meeting. All such nominees shall be identified in the notice for the annual meeting. Additionally, nominations may be made from the floor at the annual meeting. All nominations may be made among members or non-members.
- B. Election. Election to the Board of Trustees shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI  
MEETINGS OF TRUSTEES

- A. Regular Meetings. Regular meetings of the Board of Trustees shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the trustees.
- B. Special Meetings. Special meetings of the Board of Trustees shall be held when called by the president of the Association, or by any two trustees, after not less than three (3) days notice to each trustee.
- C. Quorum. A majority of the number of trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII  
POWERS AND DUTIES OF THE BOARD OF TRUSTEES

- A. Powers. The Board of Trustees shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Areas, if any, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

- (b) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration.

- (c) declare the office of a member of the Board of Trustee to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Trustees;

- (d) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and

- (e) all other powers necessary for the administration of the affairs of the Association and may do all such acts and things as are by the Utah Condominium Ownership Act, Articles of Incorporation, or Declaration required to be exercised and done by the Association.

B. Duties. It shall be the duty of the Board of Trustees to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the Association, or at any special meeting when such statement is requested in writing by forty percent (40%) of the members;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual and/or special assessments against each unit;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any unit for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A charge of Fifteen Dollars (\$15) may be made by the Board for the issuance of each certificate. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

(e) procure and maintain adequate liability and hazard insurance on property managed by the Association in compliance with the Declaration;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) provide for the operation, care, upkeep and maintenance of all of the Common Areas and services of the Condominium Development;

(h) make and amend the rule and regulations;

(i) open bank accounts on behalf of the Association and designate the signatories thereon;

(j) make, or contract for the making of, repairs, additions and improvements to or alterations of the Property, in accordance with these Bylaws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

(k) notify a mortgagee of any default hereunder by the unit owner of the unit subject to the Mortgage, in the event the default continues for a period exceeding sixty (60) days;

(l) in its sole discretion, from time to time to designate certain Common Areas as Limited Common Areas and impose any restriction and conditions on the use thereof as the Board of Trustees deems appropriate; and

(m) do any other things and acts not inconsistent with the Utah Condominium Ownership Act, Articles of incorporation, these Bylaws or the Declaration.

## ARTICLE VIII OFFICERS AND THEIR DUTIES

- A. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Trustees, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.
- B. Election of Officers. The election of officers shall take place at the first meeting of the Board of Trustees following each annual meeting of the members.
- C. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.
- D. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.
- E. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- F. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.
- G. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices created pursuant to this Article.

H. Duties. The duties of the officers are as follows:

**President**

(a) The president shall preside at all meetings of the Board of Trustees; shall see that orders and resolutions of the Board are carried out; shall sign all written instruments authorized and/or required by the Articles of Incorporation of the Association, these Bylaws or the Declaration and shall promissory notes.

**Vice-President**

(b) The vice-president shall act in the he place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

**Secretary**

( c ) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Association; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

**Treasurer**

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Trustees; shall sign all checks and promissory notes of the Association; keep proper books of account; if the Board deems appropriate, cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

**ARTICLE IX  
COMMITTEES**

The Association may appoint an Architectural Control Committee, as provided in the Declaration. In addition, the Board of Trustees shall appoint other committees as deemed appropriate in carrying out its purposes.

**ARTICLE X**  
**LIABILITY OF BOARD OF TRUSTEES, OFFICERS,**  
**UNIT OWNERS AND ASSOCIATION**

The officers, trustees, and members shall not be liable to the Association or any unit owner for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association will indemnify and hold harmless each of the officers and trustees from and against all contractual liability to others arising out of contracts made by the officers or the Board of Trustees, on behalf of the Association, except to the extent that such liability is satisfied by the trustees and officers' liability insurance. The duty of the Association described in the preceding sentence shall not apply to any contract that shall have been made by the officers or the Board of Trustees in bad faith or contrary to the provisions of the Utah Condominium Ownership Act, Articles of Incorporation or liability with respect to any contract made by them on behalf of the Association. The liability of any unit owner arising out of any contract made by the officers or the Board of Trustees, or out of the indemnification of the officers or trustees, or for damages as a result of injuries arising in connection with the Common Areas solely by virtue of his ownership in the Common Areas therein or for liabilities incurred by the Association, shall be limited to the total liability multiplied by his Common Area Interest. Every agreement made by the officers, Board of Trustees or the managing agent on behalf of the Association, shall, if obtainable, provide the officers, the trustees, or managing agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as unit owners) and the each unit owner's liability thereunder shall be limited to the total liability thereunder multiplied by his Common Area Interest. The Association shall indemnify and hold harmless any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he is or was an officer or trustee of the Association against expenses, including attorneys' fees, judgments, fines, and amount paid in settlement incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the P.U.D. Development.

The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid as a common expense, or for injury or damage to persona or property caused by the elements or by the unit owner of any townhome unit, or any other person, or resulting from electricity, water, snow or ice that may leak or flow from or over any portion of the Common Areas or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any unit owner for loss or damage by theft or otherwise, of articles that may be stored upon any of the Common Areas. No diminution or abatement of any assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common areas or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any governmental authority.



**ARTICLE XI  
ASSESSMENTS**

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are and will be secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, such delinquency shall accrue interest at the rate of one and one-half percent (1 ½%) per month from the due date, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No owner may waiver or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

**ARTICLE XII  
AMENDMENTS**

- A. These Bylaws may be amended, at a regular or special meeting of the Association, by a vote of a majority of a quorum of Association present in person or by proxy.
- B. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.
- C. Notwithstanding the provisions of Paragraphs A and B of this Article, Declarant reserves the right to amend these Bylaws at any time during Declarant Control Period, if amendment is necessary to obtain secondary market lender approvals to facilitate financing of Units.

**ARTICLE XIV  
MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we being all of the Trustees of the Ensign Place Homeowners Association, Inc. Have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 199 \_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of the Homeowners Association, Inc., a Utah nonprofit corporation, and,

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the \_\_\_ day of \_\_\_\_\_, 199 \_\_\_.

IN WITNESS WHEREOF, I have hereunto subscribed by name this \_\_\_ day of \_\_\_\_\_, 199 \_\_\_\_\_.

\_\_\_\_\_  
Secretary

704 1002  
07/30/98 11:47 AM 88.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
JAREN DAVIS  
2245 E PALMA  
SKC UT 84121  
REC BY:V VEGA ,DEPUTY - WI

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