

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
HARVEST PARK PLANNED DEVELOPMENT

THIS DECLARATION made and executed this 2<sup>nd</sup> day of March, 2004, by JB3, LLC, a Utah Limited Liability Company with its principal place of business located in Mapleton City, Utah, (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the record owner of that certain tract of Property more particularly described in Article II of this Declaration.

B. Declarant desires to provide for the development of the Property and for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end, and for the benefit of the Property and of the Owners and future purchasers thereof, Declarant desires to subject the Property described in Article II of this Declaration and the various Lots now or hereafter contained within the entire tract hereinafter described to the covenants, restrictions, easements, charges, liens hereinafter set forth, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property.

C. 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 Common Areas to be created hereafter, 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 or will cause to be incorporated under the laws of the State of Utah, as a nonprofit corporation, HARVEST PARK HOMEOWNER'S ASSOCIATION.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, restrictions, conditions, easements, charges, assessments, obligations, and liens hereinafter set forth, and for development as generally described in the Masterplan (Exhibit B).

I. DEFINITIONS

1.1. Articles and Bylaws shall mean the Articles of Incorporation and Bylaws of the Association, to be submitted hereafter.

1.2 Association shall mean and refer to the HARVEST PARK Homeowner's Association, a Utah nonprofit corporation.

1.3. 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 and Bylaws.

1.4. Commercial Units. The Commercial Units shall mean the commercial use buildings constructed on those Lots designated as "mixed use" on the Masterplan (Exhibit B).

1.5. Common Areas shall mean and refer to those portions of the Property which are not included with the Lots which is owned by Declarant and will be conveyed to the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto including but not limited to paved roads, paved parking, sidewalks, parks and trails, fixtures and other personal property owned by the Association when the context so requires.

1.6. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

1.7. Development shall at any Point in time mean, refer to, and consist of the planned unit development then in existence.

1.8. Location shall refer to each of five separate Phases or anticipated Phases, designated as numbered areas 1 through 5 on the Masterplan (Exhibit B).

1.9. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence.

1.10. Lot shall mean and refer to any one of the separately numbered and individually described plots of land described on a Plat: (a) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different lots; (b) which is intended to be used as the site of a single Living Unit.

1.11. Masterplan shall mean and refer to the Mapleton West Masterplan attached as Exhibit B, which generally depicts Developer's plan for developing the Property.

1.12. Member shall mean and refer to every person who holds a membership in the Association.

1.13. Mortgage shall mean any mortgage, deed of trust or trust deed, or the act of encumbering any Lot or any property by a mortgage, trust deed or deed of trust.

1.14. Mortgagee shall mean any person named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.15. Owner shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Utah County, Utah) of a fee or an undivided interest in any Lot.

Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.16. Plat shall mean and refer to any planned unit development plat, any subdivision plat or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more Lots; (c) on which or in an instrument recorded in conjunction there with there is expressed the intent that the planned unit development created by the Plat shall comprise the Development; and (d) which is filed for record in the office of the County Recorder of Utah County, Utah. Recorded concurrently with this Declaration is a planned unit development plat of HARVEST PARK Planned Unit Development, and executed and acknowledged by Declarant on Nov 2, 2004, and creating separately numbered Lots.

1.17. Property shall mean and refer to all of the real property described in Exhibit A.

1.18. PUD shall mean and refer to the entire Development which is created and covered by a Plat.

1.19 Segment shall mean and refer to the divisions of Phase 1 which have been created for the purposes of this Declaration.

1.19 Single Family Homes shall mean and refer to those homes to be built in part of Phase 1 and in Phase 2, as depicted on the Masterplan (Exhibit B).

1.20 Townhome PUD, One Family Home PUD, and Two Family Home PUD shall refer to those residential units to be built in part of Phase 1 and in Phases 3, 4 and 5, as depicted on the Masterplan (Exhibit B).

## II. PROPERTY DESCRIPTION AND USES

2.1. Conveyances. The Property which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of the Declaration consists of the following-described real property situated in Mapleton City, State of Utah.

a. Property Conveyed. The Property described on the attached Exhibit A shall be conveyed for sale to Owners, subject to the reservations and easements set forth below.

b. Property Excluded. Excluded from conveyance to Owners are all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, streets, to the extent that they are located outside the Lots included with the above-described tract. Also excluded are areas designated for parks, and areas to be designated for churches.

c. Easements. Reserved unto Declarant, its designees and assigns, are easements and rights of ingress and egress over, across and through and under the above-described

tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or any assignee of Declarant, in a manner which is reasonable and not inconsistent with the provisions of this Declaration, as follows:

(i). Construction Easement. A temporary easement to construct a Living Unit on each and every Lot. The temporary easement hereby created shall, unless sooner terminated in accordance with its terms, expire ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

(ii). Common Area Easement. A perpetual easement, which shall be transferable to the Association or other designee of Declarant, to improve the Common Areas with such facilities, including, but limited to, roads, recreational facilities, walkways and various landscaped areas, designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate.

(iii). Lot Maintenance Easement. A perpetual easement, which shall be transferable to the Association or other designee of Declarant, to maintain the real property around the Townhome PUDs, One Family Home PUDs, and Two Family Home PUDs, including the yards and exterior of the buildings located thereon, and to maintain the real property around the Single Family Homes in the event of failure of any Single Family Home Owner to properly maintain same.

(iv.) Open Space Easement. A perpetual easement, which shall be transferable to the Association or other designee of Declarant, to allow other Owners of the Property or their guests to use the real property adjacent to each of the Townhome PUDs, One Family Home PUDs, and Two Family Home PUDs, for light recreational purposes, which will include such recreational activities as do not involve the use of any motorized vehicle, or of any other activity that is of a nature that will interfere with such Owner's right of peaceful enjoyment within his Living Unit. This Open Space Easement will not extend to the sidewalks and driveway of the individual lots nor will this Open Space Easement extend to the private patio/courtyard located adjacent or contiguous to the dwelling unit. The private patio Courtyard shall be a maximum of 450 square feet in size unless otherwise approved by the Architectural Control Committee. Nothing shall be constructed on the Open Space Easement areas without the written permission of the Board and without approval of the City of Mapleton.

(iv). Access Easement. Some of the Common Areas may be conveniently accessible only through a Lot. The Association shall have the irrevocable right to have access to each Lot and to all Common Areas from time to time during such reasonable hours and upon such reasonable notice to the affected Owners as shall be required in connection with any cleaning, maintenance,

repair, or replacement of any Common Area and in connection with any cleaning, maintenance, repair, replacement, landscaping, construction, or reconstruction for which the Association is responsible. The Association shall also have the irrevocable right of access to each Lot for making emergency repairs or otherwise conducting emergency procedures as necessary prevent damage to the Common Areas or to any structure located on the Property, upon reasonable attempt to notify any Owner affected by such access. Any such entry shall be made with as little inconvenience to the Owners as practicable, and any damage cause thereby shall be repaired by the Association with Association funds.

(v). Emergency and Utility Services Easement. Fire, police and other emergency personnel and utility and communication companies shall have an easement over and upon the parking areas and all exterior walkways and sidewalks within the Property for the purposes of carrying out their duties and responsibilities.

(vi). Utility Easement. If, pursuant to the foregoing reservation, the above-described Property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations of record and rights incident thereof; all instruments of record which affect the above-described tract or any portion thereof, including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.

2.2 Uses of Property. The Property shall be used for the following purposes:

- a. The Lots located in Phase 1 shall be developed for mixed use. Phase 1 shall be divided, for descriptive purposes of this Declaration only, into Segments 1-A, 1-B, 1-C, 1-D, and 1-E, with the intended uses as follows:
  - (i) Segment 1-A shall mean and refer to that portion of those Lots which border and face Highway 89, with parking areas, and shall be composed of buildings which face Highway 89 which shall be commercial in nature (i.e., either retail shops or professional offices);
  - (ii) Segment 1-B shall mean and refer to buildings and related parking spaces which will be constructed adjoining and above the Commercial Units in Segment 1-A, which shall be residential in nature, and which are anticipated to be condominiums, which will face west toward the remainder of the Living Units.
  - (iii) Segment 1-C shall mean and refer to the One Family PUD Homes and Two

Family PUD Homes contained in Phase 1, as generally depicted in the Masterplan (Exhibit B).

(iv) Segment 1-D shall mean and refer to the “Cescent” of Townhomes PUD located in approximately the center of the Property, as depicted generally on the Masterplan (Exhibit B).

(v) Segment I-E shall mean and refer to the Single Family Homes which are located in Phase 1, as depicted generally on the Masterplan (Exhibit B).

- b. The Lots in Phase 2 shall be for the construction of Single Family Homes.
- c. The Lots in Phases 3, 4 and 5 shall be generally used for construction of either One Family or Two Family Home PUDs or Townhome PUDs, as generally depicted on the Masterplan (Exhibit B).
- d. Each Living Unit shall be used and occupied solely as a dwelling place and may not be used, caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other nonresidential purpose. The Board shall have authority to adopt rules and regulations regarding the use of offices and/or non-business uses within a Living Unit in order to maintain the residential characteristics of the Living Units.
- e. Subject to the provisions of this Declaration and the applicable enactments of the City of Mapleton, County of Utah, and State of Utah, the Commercial Units may be used for retail or office use, provided however that the Commercial Units shall not be used for any of the following uses: adult book and/or video store; amusement center; betting parlor; bingo parlor; bowling alley; carnival; check cashing or loan services other than a bank, credit union or mortgage company; flea market; tattoo or body piercing parlor; fortune telling; palm reading or other business related to the occult; gambling establishment; illegal, offensive, noisy or dangerous trade; any sexually oriented business; novelty shop or store; nude or partially nude entertainment; pornographic shop or store; thrift shop; garage or auto body shop; storage facility; skating rink; store or shop engaged primarily in the sale of used products. Notwithstanding anything to the contrary in the foregoing, no Commercial Unit shall be used for any use (1) resulting in the emission of smoke, fumes, odors, gases, vapors, steam, dust, sweepings, dirt, cinders or other particles or substances into the atmosphere which are detectable outside the boundaries of such Commercial Unit or which may be detrimental to the health, safety, welfare or comfort of any Owner or any other person, to the condition of any other building or vegetation in the Project, other than for use as a restaurant upon the approval of the Board; (2) resulting in the recurrent or continuous emission of sound or noise from such Commercial Unit which may be heard without instructions outside the boundaries of such Commercial Unit; (3) resulting in the discharge of glare or heat, subsonic or ultrasonic sounds, or atomic, electromagnetic, microwave, ultra-violet, laser or any other radiation

which is detectable from any point exterior to such Commercial Unit; (4) resulting in recurrent or continuous ground vibrations perceptible without instruments at any point exterior to such Commercial Unit, (5) resulting in the discharge of fluids, gases, solid wastes or other harmful materials into any drainage facility or other waterway which may adversely affect the health, safety, welfare or comfort of any Owner or other person or the condition of any portion of the Property; (6) involving dry cleaning or laundry plants or facilities other than facilities used solely for the collection of soiled clothing and other fabrics to customers. Notwithstanding anything to the contrary in this paragraph, the Owner of any Commercial Unit may request a determination from the Board as to whether a particular use of a Commercial Unit is permitted hereunder, and such determination shall be binding on the Association and all Owners, provided however that the Board shall not have the authority to permit a variance from the provision of this paragraph. No commercial activities may be conducted in any Commercial Unit until the Owner or Owner's tenant of such Commercial Unit complies with all permit, licensing and other commercial requirements and conditions imposed by the City of Mapleton, the County of Utah and the State of Utah.

- f. Certain areas as generally depicted on the Masterplan (Exhibit B) shall be dedicated as neighborhood or city parks, subject to approval of the City of Mapleton.
- g. Declarant may, but is not obligated to, convey sufficient Lots for a house of worship to be located on the property, subject to approval of same from the City of Mapleton.

### 2.3 General Plan of Development.

- a. Purpose. The general plan of development, illustrated by the Masterplan (Exhibit B) is the dynamic design for the development of HARVEST PARK as a planned development, which will be regularly modified and amended, as provided herein, during the several years required to build the community.
- b. Amendments. Declarant hereby reserve the right to amend the general plan of development in response to changes in technological, economic, environmental or social conditions related to the development or marketing of the Lots, or to changes in requirements of government agencies or financial institutions. Such amendments shall be effected by (1) giving notice of the proposed changes to the Association, who shall in turn give notice to any Owners then of record, (2) publishing notice of proposed changes in a newspaper of general circulation in Utah County once a week for two consecutive weeks, and (3) securing approval of any appropriate public agencies having jurisdiction in the matter if such approval is required. Providing that the requisite notice has been given to the Association, the Association may not use its resources nor take a public position in opposition to the proposed changes; however, nothing herein shall be construed to limit the rights of a Member of the Association to act as an individual or in affiliation with

other Member of the Association or groups with respect to the proposed changes.

2.4 Nature of Ownership.

a. The Single Family Homes and Commercial Units shall be conveyed in fee simple absolute to each purchaser, who shall thereby become an Owner and a member of the Association.

b. The Townhome PUDs, One Family Home PUDs, and Two Family Home PUDs shall be conveyed in fee simple absolute to each purchaser, who shall thereby become an Owner and member of the Association. Each such conveyance shall contain the reservation of an easement on all ground except the actual footprint (including the private patio/courtyard) of each building to be constructed thereon, and on the exterior of such building, for the purpose of maintaining the grounds and exterior of the buildings, which maintenance shall be performed by the Association in its discretion and subject to the terms of this Declaration.

III. MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest. This covenant of membership shall run with the land and shall not be separated from the Lot to which it appertains.

3.2. Voting Rights. The Association shall have the following described three classes of voting membership:

Class A. Class A Members shall be all Owners other than the Declarant until the Class B membership Ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. Class B Members shall be the Owners, or their lessees, of the Commercial Units to be constructed upon Segment 1-A of the Property. Class B Members shall be entitled to one vote for each Lot in which the interest required for membership in the Associations is held. In no event, however, shall more than one Class B vote exist with respect to any Lot.

Class C. The Class C member shall be the Declarant. The Class C Member shall be entitled to ten (10) votes for each Lot in which it holds the interest required for Membership in the Association. The Class C Membership shall automatically cease and be converted to a Class A membership on the first to occur of the following events:

(a) As to an individual Lot, when such Lot is sold to an Owner;

(b) When the total number of votes held by all Class A



Members equals the total number of votes held by the Class B Member; or

(c) The expiration of ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

3.3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of the such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned except that if an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. Upon the failure of co-owners to agree regarding a vote, no vote shall be recognized as to that specific Lot. Partial votes will not be accepted.

3.4. 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 Lot. 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 Lots. Any Owner who mortgages his Lot 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 records of ownership. Each Owner shall also notify the Association in writing of any change of address by the Owner. 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 6.5. Each Owner agrees that transmittal by first class mail, postage prepaid, of any document to the address listed on the records of the Association or of the Utah County Recorder's office for the Owner of any Lot shall constitute sufficient notice to such Owner for all purposes under this Declaration.

#### IV. PROPERTY RIGHTS IN COMMON AREAS

4.1 Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas and the Private Streets. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee or contract purchaser who resides on such Member's Lot.

4.2 Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas and Private Streets shall be subject to the following:

a. The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

b. The right of the Architectural Control Committee to approve and designate the point of access from a Lot to the Streets in accordance with the requirements of Article VIII.

c. The right of Mapleton City and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

d. The right of the Association to dedicate or transfer all or any part of the Common Areas, the Private Streets and any sewer, water and storm drain trunk lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of a quorum of each class of membership with such quorum being present or in person or by proxy. Such vote shall be taken at a meeting called for that purpose, which meeting shall be conducted pursuant to notice to be sent at least ten (10) but not more than thirty (30) days prior to the meeting date.

## V. CONDITIONS ON TRANSFER OF TITLE

5.1 Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_, contained within HARVEST PARK PUD, as the same is identified in the Plat recorded as Document No. \_\_\_\_\_, of the official records of the Utah County Recorder, SUBJECT TO the Declarations of Covenants, Conditions and Restrictions of HARVEST PARK Planned Unit Development recorded as Document No. \_\_\_\_\_, of the official records of the Utah County Recorder, TOGETHER WITH a right and easement of use and enjoyment in and to the common Areas and Private Streets described and provided for in said Declaration of Covenants, Conditions and Restrictions and in the Record of Survey Map in the official record of the Utah County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

5.2 Transfer of Title. Declarant agrees to convey to the Association title to the various common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities), as each such Common Area is, in the discretion of Declarant, substantially completed.

6.1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with a property interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, together with the hereinafter provided for interest and costs of collection, and such covenant shall run with the land. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, 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 attorneys fees, which shall be a charge on the Lot 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.

6.2. Purpose of Assessments. Assessments levied by the Association shall be used for the purpose of promoting the safety and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Development. The use made by the Association of funds obtained from assessments may include, but is not limited to, payment of the cost of taxes and insurance on the common Areas; maintenance, repair and improvements of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; maintenance of the grounds and building exteriors of the Lots located in Phases 3, 4 and 5; any repairs performed pursuant to Sections 6.4 and 6.5 herein, and any other expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under its Articles or Bylaws or this Declaration.

6.3. Maximum Monthly Assessment. As of the date set forth in Section 6.7, each Lot shall be subject to a monthly assessment as follows:

Segment 1-A: not more than Seventy Eight Dollars (\$78.00).

Segment 1-B: not more than Seventy Eight Dollars (\$78.00).

Segment 1-C, Phases 3 and 4: not more than Eighty Five Dollars (\$85.00).

Segment 1-D and Phase 5: not more than Eighty Dollars (\$80.00).

Segment 1-E and Phase 2: not more than Forty Five Dollars (\$45.00).

From and after the date set in Section 6.8, the maximum monthly assessment may be increased or decreased so long as the change is assented to by not less than a simple majority of the Board.

6.4. Special Assessments. From and after the date set as set forth in Section 6.8, the Board 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 repair or replacement in connection with the Common Areas. Any such special assessments must be assented to by not less than a simple majority of a quorum of at least twenty-five percent (25%) of each class of membership with such quorum being present or in person or represented by proxy at a meeting duly called for such purposes. Written notice setting forth the purpose of such meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

6.5. Reimbursement Assessment on Specific Lot. In addition to the monthly assessment and any special assessment authorized pursuant to Sections 6.3 and 6.4 above, the Board may levy at any time special assessments (a) on each Lot specifically benefitted by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on each Lot the Owner of occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on each Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 3.4, Section 7.1(c), Section 7.2(a) or other provisions of this Declaration (all or part of the foregoing being sometimes referred to as "Reimbursement Assessment"). 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 attorney's fees, and shall be allocated among the affected Lots 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 Reimbursement Assessment against the Lots benefitted.

6.6. Uniform Rate of Assessment. Except as provided in Section 6.5 above, monthly and special assessments shall be fixed at a uniform rate for all Lots within a specific segment. There shall be no assessment for vacant or unimproved lots owned by the Developer or the Association until the issuance of a certificate of occupancy for a dwelling unit has been issued for such lot.

6.7 Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- a. Portions of the Property dedicated to and accepted by any local authority;
- b. The Common Area;
- c. Property exempt from general property taxes under Utah law.

6.8. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the date a deed is delivered to the purchaser of the first Lot, or if the sale is by way of a contract of sale, on the date the contract is executed by the parties thereto, or the date of occupancy agreement, or the date the Owner actually takes possession of a Lot, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy as the case may be. Thereafter all monthly assessments shall be due and payable on the first day of each month. A monthly assessment not paid within ten (10) days of due date thereof shall be deemed late and subject to a late fee of \$15.00 or

an amount as determined by a majority of the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

6.9. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

6.10. Effect of Non-Payment; Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection be, constitute and remain a continuing lien on the affected Lot; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments became due. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum (or at a rate approved by a majority of the Board) and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. The Association may, upon such delinquency, file a Notice of Lien against the Lot with the Utah County Recorder's Office as allowed by Utah law. In the event that management or an attorney is required to be retained to pursue collection of assessments herein, the Owner against whom such action is taken shall be required to pay the reasonable attorneys fees, court costs, and any other reasonable expense incurred by the Association. Such fees, costs and expenses shall be added to any assessment, and shall be a lien upon such Lot, regardless of whether litigation is commenced. Any assessments which are in excess of sixty (60) days (or other time period as determined by the Board) past due shall result in a suspension of such past-due Owner's voting rights herein, until such time as all assessments are paid current.

6.11. Tax Collection by County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Utah County therefor. It is further recognized that each Owner of a Lot as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid, which reimbursement shall be included in the Assessment levied pursuant to Section 6.3 herein. Notwithstanding anything to the contrary contained in the Declaration, Utah County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

## VII. DUTIES AND POWERS OF THE ASSOCIATION

7.1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles or 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:

- a. The Association shall accept all Owners as members of the Association.
- b. The Association shall accept title to all Common Areas conveyed to it by

c. The Association shall maintain, repair, and replace all landscaping, paved roads, paved parking areas and all other improvements in the Common Areas and in the Open Space Easements.

d. The Association shall maintain, repair and, and if necessary replace, all landscaping and building exteriors in the Lots on which Townhome PUDs, One Family Home PUDs or Two Family Home PUDs are located, and upon the failure of the Owner of any Single Family Home to do so, to maintain, repair and, and if necessary replace, all landscaping and building exteriors on the Lots of such Single Family Home.

e. To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

f. The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

g. 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.

h. The Association shall have the authority to, and shall, make, establish, amend and repeal such Association rules as it deems necessary in the performance of its duties, and subject to the restrictions set forth in this Declaration.

**7.2 Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles and Bylaws and this Declaration, 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:

a. 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 Lot for the purpose of maintaining and repairing such Lot or any

improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration. The Association shall have the right to permit access to the PUD through any and all entrances, subject to governmental requirements, and to close all or any portion of a Private Street to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right therein to any person or the public. The Association shall also have the power and 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 restrain 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 regulation.

b. In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Open Space Easements (and exterior repairs of Living Units where applicable) 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 (i) to pay and discharge any and all liens placed upon any Common Areas and Open Space Easements on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

i. Construction, maintenance, repair and landscaping of the Common Areas and Open Space Easements (and exterior repairs of Living Units where applicable) on such terms and conditions as the Board shall deem appropriate.

ii. 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;

iii. Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;

iv. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

v. Any other services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

vi. Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

c. 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 One Thousand Dollars (\$1,000.00), nor the power to sell, convey, mortgage, or encumber any Common Areas.

In the event that the need for maintenance or repair of Common Areas and Open Space Easements as specified herein is caused through the willful or negligent acts of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten (10%) percent of such costs) to be added to and become part of the Reimbursement Assessment (as set forth in Section 6.5) to which such Lot is subject.

7.3. 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 the 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 Living Units for business or rental purposes; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents. The Board may also adopt additional Architectural Guidelines for the construction of Living Units. Rules and Regulations and/or Architectural Guidelines adopted by the Board may be enforced in accordance with the provisions of Article IX.

7.4. 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.

7.5. Insurance. The Association shall secure and at all times maintain the following insurance coverage:

(a) Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising all or a portion of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "The HARVEST PARK Homeowner's Association for use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear".

(b) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$500,000 for any one person injured; \$3,000,000 for all persons injured in any one accident; and \$100,000 for property damage resulting from one occurrence. Such policies shall be



issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.

(2) All policies shall be written by a company holding rating of "AA" or better from Best's Insurance Reports.

(3) The Association shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owner, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be canceled, suspended or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by Owners.

7.6. Quorum Requirements. The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in this Declaration, shall be as follows: All owners present in person or by proxy shall constitute a quorum.

## VIII. USE RESTRICTIONS

8.1. 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 Lots and Living Units.

8.2. Use of Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any Lot or Living Unit except as provided in Rules and Regulations adopted

by the Board. Each Living Unit shall be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

### 8.3. Building Features and Materials.

a. Building Location. Each building shall be located in compliance with the following:

(i) The building shall be oriented as consented to by the Architectural Control Committee in accordance with the provisions of Article IX.

(ii) The Architectural Control Committee shall determine all setback requirements. However, each owner requesting a setback modification shall be solely responsible for obtaining any necessary consents and/or variances from applicable governmental authorities.

(iii) For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building.

b. Garages. Garages must be fully enclosed and be equipped with an automatic garage door opener.

c. Exterior Building Wall Materials. Brick, stone, stucco and fiber reinforced concrete siding are permitted for the exteriors of Living Units and accessory buildings; provided that not less than twenty five percent (25%) of the area of the front walls of each Living Unit shall be constructed of brick, stone or masonry materials. The use of any other materials for such buildings shall require the prior approval of the Architectural Control Committee.

d. Roof, Soffit and Fascia. Roof, soffit and fascia material shall be restricted to wood shingles or shakes, slate, tile, twenty-five year or architectural grade asphalt, fiberglass or other materials approved by the Architectural Control Committee. The use and design of roof, soffit and fascia materials is subject to the approval of the Architectural Control Committee. The roof color shall be limited to a "weather wood" color or a color approved by the Architectural Control Committee. Fascia and soffit colors shall be restricted to white, off white, almond or tan as approved by the Architectural Control Committee. The roof shall have a minimum 8/12 pitch. Unless otherwise approved by the Architectural Control Committee, when two-thirds of the roof is equal to or greater than 12/12 pitch, then one-third may be as low as 3/12 pitch.

e. Accessory Structures. Patio structures, trellises, sunshades, gazebos and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures and materials approved for the dwelling and shall be integral to the

architecture of the house and subject to the approval of the Architectural Control Committee.

f. Chimneys. Chimneys of approved exterior materials may not exceed the height required by appropriate governmental agencies. Other than the direct vent type, exposed metal flues are not acceptable; all chimneys shall be covered with a hood to hide the flue system.

g. Mailboxes. All mailboxes shall be grouped in common areas with a design and location approved by the Architectural Control Committee.

h. Fences and Walls. Subject to the exceptions set forth below and except as to fences installed by Declarant, fencing shall be constructed of vinyl, metal, masonry or stucco on masonry and shall be approved by the Architectural Control Committee. No chain-link fences will be allowed. Fences shall not extend past the front of any Living Unit. Six (6) foot high privacy enclosures (fences) approved by the Architectural Control Committee shall be permitted on corner Lots on one side only. Front yard fences shall not be allowed except as approved by the Architectural Control Committee. Privacy enclosures shall be constructed and maintained in the same manner as other fencing unless approved by the Architectural Control Committee.

i. Mechanical Equipment. All air conditioning, heating equipment, evaporative coolers and soft water tanks must be screened from view and insulated for sound attenuation. Air conditioning units and evaporative coolers are not permitted on roofs or through windows unless approved by the Architectural Control Committee.

j. Gas and Electric Meters. Meter locations are to be designed into the architecture of the dwelling and screened from view.

k. Exterior Lighting. All exterior side lighting is to be indirect. Owners shall be permitted to utilize accent and spot lights on their Living Units.

l. Landscape Site Preparation Guidelines. All demolition, clearing, grubbing, stripping of soil, excavation, compaction and grading must be performed within the confines of a Lot.

m. Site Grading and Drainage. Mapleton City requires that each Lot Owner retain on his own Lot (except where shown otherwise on the approved drainage plan), water runoff in accordance with the approved HARVEST PARK PUD Grading and Drainage Plan submitted by the Declarant in connection with its application for PUD approval.

n. City and Other Approval. Approval of any improvements by the Architectural Control Committee does not waive the requirement for any other required public agency review or permit approval process. By approving plans, the

Architectural Control Committee takes no responsibility for plan conformity to any other criteria other than the requirements of this Declaration and any Architectural Guidelines.

o. Metal Awnings. Metal awnings, metal “lean-tos”, or metal patio covers shall not be permitted on any Lot, unless approved by the Architectural Control Committee..

#### 8.4. Landscaping of Lots.

a. Single Family Homes. The Owner of each Single Family Home shall have the obligation to maintain the yard, landscaping and building exterior, all of which shall be performed in accordance with the requirements set forth in this Declaration.

b. Townhome PUDs, One Family Home PUDs, and Two Family Home PUDs. The yard, landscaping and building exterior of each Townhome PUD, One Family Home PUD and Two Family Home PUD shall be maintained by the Association, in accordance with the requirements and pursuant to the easements set forth in this Declaration.

8.5. Recreational Vehicles. No boats, trailers, large trucks and commercial vehicles belonging to Owners, residents of the Property or other parties shall be parked within the Development except in the designated R.V. parking area. Boats and recreational vehicles, moving vans and delivery trucks which serve residents in the project may temporarily park in the project for one twenty-four (24) hour period every seventy-two (72) hours. Vehicles that are not in running condition and properly registered will be prohibited and will be towed away at the owner’s expense. No motor vehicles of any kind shall be repaired while the vehicle is parked in the project (except emergency repairs). Any motor or recreational vehicle must be kept in an enclosed garage.

8.6. Pets. No animals other than household pets shall be kept or allowed on any Lot, in any Living Unit, or within any part of the Common Areas. Whenever a pet is allowed to leave a Lot, it shall be kept on a leash or in a cage. No animals may be bred for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. The exterior structure for the care, housing or confinement of any such pets shall be maintained by Owner and approved by the Architectural Control Committee. Any Owner or other resident within the Development who violates this Section shall be subject to such penalties or fines as the Board by resolution or as regulation may provide.

8.7. Common Areas. The Common Areas of the Development shall be improved and used only for the following purposes:

a. Vehicular and pedestrian access to and from and movement within the Development, and space for temporary vehicular parking.

b. Recreational use by Owners and occupants of Living Units and their guests.

c. Beautification of the Development.

d. Privacy for the Owners and occupants of Living Units.

e. 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.

8.8. Insurance. No use shall be made of any Living 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 presently known as homeowner's special form coverage (Form 3, or better). An Owner may be required to obtain flood insurance as a condition to obtaining any financing covering any improvements upon a Lot.

8.9. Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Living Unit or appurtenant structures.

8.10. Maintenance and Repair. Each Owner of a Single Family Home shall have the obligation to provide exterior maintenance of his Living Unit including but not limited to painting, repair, replacement and care of roofs, gutters, down spouts, exterior building surfaces, and landscaping installed by an Owner or his predecessor in title. Each such Owner shall paint, repair, and otherwise maintain the exterior and interior of his living unit and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing and heating, ventilating and air conditioning systems.

The grounds and exterior of all Living Units other than those set forth in the immediately preceding paragraph shall be maintained by the Association. Each such Owner shall be responsible for maintaining the interior of his living unit and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing and heating, ventilating and air conditioning systems serving that one unit.

8.11. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the employment of occupants of other Living Units or Lots. No exterior speakers, horns, whistles, bells or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or in Living Units. Loud and disturbing noises are not permitted at any time. Sound equipment and musical instruments must be turned and/or played at a level that will not annoy other lot owners. Loud parties will not be permitted at any time.

Lot owners and their tenants must abide by all state, city, and country laws, ordinances and zoning regulations. Any conduct by a lot owner or their tenants while within the Property, which results in arrest by law enforcement officers or results in criminal charges, shall constitute a violation of these Rules.

8.12. Right of Entry. During reasonable hours, and upon one day's 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 Lot, and the improvements thereof, to ascertain whether or not the provisions of this Declaration and the rules and regulations of the Board or of the Association have been or are being complied with.

8.13. Signs. No signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except:

- a. Such signs as may be required by legal proceedings.
- b. Construction identification signs, placed and maintained only during construction of a Living Unit, not exceeding four feet wide and four feet high, for each Living Unit.
- c. A "For Sale" or "For Rent" sign, to the extent permitted by the Board.

8.14. 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 Architectural Control Committee. Insofar as possible, such containers shall be maintained as not to be visible from neighboring Lots except to make them available for collection and then only for a 24-hour period.

8.15. 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:

- a. Declarant, so long as it has any interest in any of the Property;
- b. Any Owner; or
- c. The Association.

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.

8.16. Exception for Declarant. Notwithstanding the restrictions contained in this Article VIII, for the ten (10) years following the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah, Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonable necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by the Declarant.

## IX. ARCHITECTURAL CONTROL

9.1. Architectural Control Committee. The Board shall appoint a three-member Committee, the function of which shall be to insure 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.

9.2. Submission to Committee. No Living Unit, accessory building or structure or addition to a Living Unit and no landscape additions and changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit, nor of any court enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee. All such plans and specifications shall be consistent with Architectural Guidelines which shall be from time to time adopted by the Board.

9.3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures and that such proposed improvements enhance the value and aesthetics of the Project. The Committee shall establish a general set of guidelines for any building construction to be performed on the Property. Upon the establishment of such guidelines, they shall generally govern the approval process. The Committee's approval of a specific building which varies from the general guidelines shall not constitute a waiver of the Committee's authority to disallow any subsequent proposals. The Committee shall make the final determination as to the acceptability of any building plan

9.4. Approval Procedure. Any plans and specifications submitted to the Committee shall be submitted on a form provided by the Committee and in duplicate. A preliminary review of design drawings will be required with a final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Association and the remaining set of plans will be returned to the property owner.

All plans and specifications shall be approved or disapproved by it in writing within twenty (20) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

9.5. Bond/Security Deposit. The Architectural Control Committee will require that an Owner post a bond, cash security deposit or irrevocable letter of credit in a form satisfactory to the Architectural Review Committee, in an amount not to exceed \$1,000.00, in favor of the Association, as a condition to approving any proposed work or improvement. No person shall commence any work or improvement until any and all such bonds, security deposits and letters of credit have been properly posted with the Architectural Review Committee. (Unless such bond is waived by Architectural Control Committee on the basis that extent and nature of work does not require a bond)

The deposit is intended to assure the proper clean-up of dirt and debris and the repair of any damage to the landscaping, streets or other property within the PUD, caused by Owner or his agents in the construction of improvements.

9.6. Address for Submittal. Plans and specifications for the construction and installation of any and all improvements within HARVEST PARK PUD shall be submitted and approved by the Architectural Control Committee (prior to submittal to any required governmental agency) at the following address:

JB3, LLC  
 126 West 1200 North  
 Mapleton, Utah 84664

The Board of Trustees of HARVEST PARK Homeowner's Association has the authority to change the address for the submittal of plans and specifications.

9.7. Construction.

(a) Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion:

(i) The exterior construction of all structures on any Lot shall be completed within a period of one (1) year following commencement of construction.

(ii) The front yard of each Lot shall be landscaped within a period of one (1) year following commencement of construction.

(iii) Side and rear yards shall be landscaped within a period of one (1) year following completion or occupancy of each dwelling.

If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of the Common Areas in the vicinity of the activity.

(b) Owners and builders shall clean up all trash and debris on the construction site at the end of each week. Trash and debris shall be contained in a trash enclosure on site which shall be removed off-site when full. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials of the construction site. Owners and builders are prohibited from dumping, burying or burning trash anywhere on the lot. During the construction period, each spaces and driveways.

Each property owner and builder shall be responsible for providing adequate sanitary facilities for his construction personnel. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Architectural Control Committee.

Construction crews shall not park on, or otherwise use, other lots or any open spaces. All construction vehicles and machinery shall be parked only in areas designated by the Architectural Control Committee.

9.8. Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VIII.



9.9. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

9.10. Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all Living 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) subject to the limitation of Section 8.4, that on or before ten (10) years from the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah, there shall be substantially completed and usable all Common Areas of the PUD, all approximately in the location shown on the Plat.

## X. RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

10.1. Notice of Default. In the event an Owner neglects for a period of thirty (30) days or more to cure any failure on his part to perform his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's Lot.

10.2. Abandonment, Termination, Etc. Unless all of the holders of first mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission or otherwise:

(a) To abandon or terminate the project or to abandon or terminate the arrangement which was established by the Declarant and the Plat of the Project;

(b) To partition or subdivide any Lot or the Common Areas;

(c) To abandon, partition, subdivide, encumber, sell, hypothecate, transfer or otherwise encumber all or any part of the Common Areas except for the creating of easements and similar purposes consistent with the intended use of the Common Areas; or

(d) To use hazard insurance proceeds resulting from damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

10.3. Notice of Substantial Damage or Destruction. The Association shall notify all holders of any first mortgage lien or equivalent security interest on a Lot in writing in the event that there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction.

10.4. Condemnation of Eminent Domain Proceedings. The Association shall give written

notice to all holders of any first mortgage lien or equivalent security interest of any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same.

10.5. Hazard Policy to Include Standard Mortgagee Clause. Each hazard policy of the insurance shall include the standard mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear, or shall be otherwise endorsed to fully protect the interest of mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

10.6. Rights Upon Foreclosure of Mortgage. The lien of the assessments provided in Section 1, Article VI shall be subordinate to the lien of any First Mortgage upon such Lot; and the holder of a first mortgage (or deed of trust) on a lot who comes into possession of the Lot by virtue of foreclosure of such first Mortgage, or in lieu of foreclosure obtains possession by deed or assignment, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots including the mortgage Lot.

10.7. Mortgagees' Rights Concerning Amendments. No material amendment to this Declaration, the By-Laws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least two-thirds (2/3) of the mortgagees (based on one vote for each mortgagee) of the individual Lots have given their prior written approval to such amendment.

10.8. Mortgagees' Rights to Inspect Association Records. The holders of first Mortgages shall have the right upon reasonable notice and during business hours to inspect and copy at their own expense all books and financial records of the Association.

10.9. Priority. The lien for assessments herein shall not be subordinate to the lien of any mortgagee except the lien of a first mortgage given and made in good faith and for value that is recorded against such Lot prior to the recordation of a claim of lien for the assessments provided for in this Declaration.

## XI. MISCELLANEOUS

11.1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed, postage prepaid, to the person who appears as a member or Owner, at the latest address for such person appearing in the records of the Association or of the Utah County Recorder's office at the time of mailing.

11.2. Amendment. Subject to the provisions of Section 2 of Article IX of this Declaration any amendment hereto shall require (i) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes, which Members present in person or represent by proxy are entitled to cast at a meeting duly called for such purpose; and so long as the Class B membership exists, (ii) the written consent of the Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty

(30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of the Class A Membership shall constitute a quorum. If the quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3), at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the President or Vice President of the Association, and by the Declarant if the Class B Membership then exists. In such instrument the President or Vice President of the Association shall certify that the vote required by this Section for amendment has occurred.

11.3. Consent in Lieu of Voting. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership considered. The following additional provisions shall govern any application of this Section 11.3:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 11.3 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

11.4. Lease Provision. Any Owner may lease his Lot and such buildings as are situated thereon; provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing, and must provide, inter alia, that:

(a) The terms of the lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the By-Laws; and

(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

11.5. 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.

11.6. Dissolution. Subject to the restrictions set forth in Article IX of this Declaration pertaining to mortgagee protection, the Association may be dissolved by the affirmative assent in writing of two-thirds (2/3) of the votes of each class membership. Upon dissolution of the Association all of its assets (including the Common Areas) may be dedicated or transferred to an appropriate public agency or authority to be used for purposes similar to those provided for in the Articles, Bylaws or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a non profit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters and sidewalks on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth in Article VI of this Declaration.

11.7. Declarant's Covenant to Construct Common Areas. Declarant hereby covenants to construct and complete all Common Areas improvements and amenities indicated on the Plat within three (3) years of the filing of this Declaration in the office of the County Recorder of Utah County, Utah.

11.8. Enforcement by City. If the Association fails to maintain the Common Areas, the common access roadways, along with the curbs, gutters and sidewalk, in good order and condition, Mapleton City shall have the right, but not the obligation, upon giving the Association thirty (30) days notice in writing, to step in and do the necessary maintenance and management with the same right to lien the Lots and collect the costs thereof against the Owners as the Association has under this Declaration shall not affect the validity or enforce ability of the remainder hereof.

11.9. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

11.10. Property Part of Development. The Property shall comprise the Parks at Mapleton PUD.

11.11. Covenants to Run With Land. This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Declarant, and all parties who hereafter acquire any interest in a Lot or in the Common areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

11.12. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

EXECUTED the day and year first above written.

ENT 125365:2004 P6 29 of 31

JB3, LLC

By Boyd Adams  
Boyd Adams, Managing Partner

STATE OF UTAH        )  
                                  ) ss.  
COUNTY OF UTAH    )

On the 2 day of November, 2004,  
personally appeared before me Boyd Adams, the signer(s) of the foregoing instrument, who duly acknowledged to me that he/she executed the same.

[Signature]  
Notary Public

My Commission Expires: 12/06/2007      Residing at: Provo, Utah

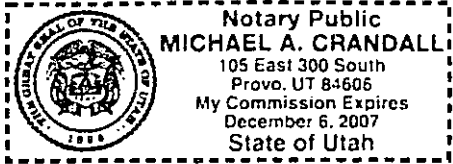
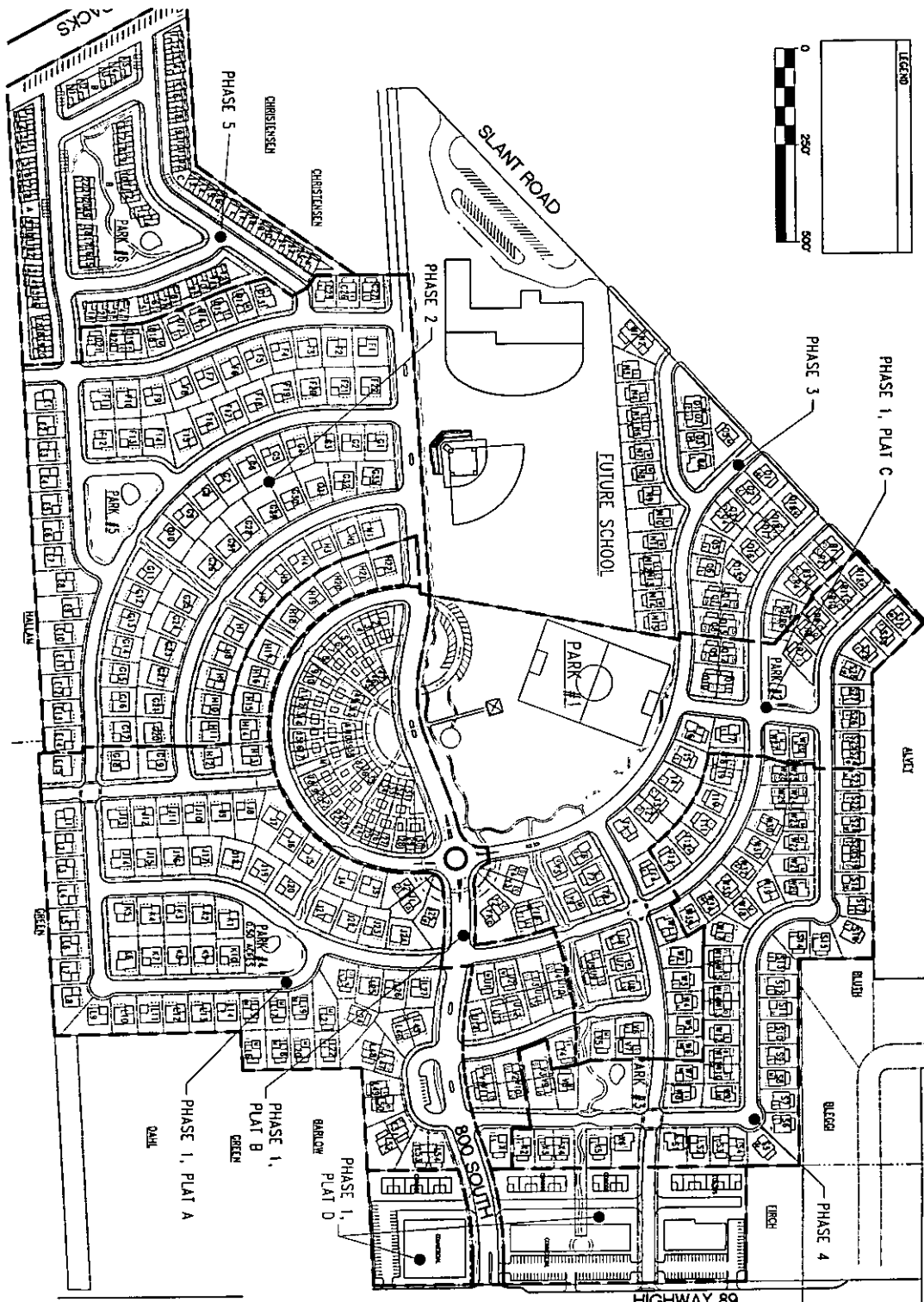


EXHIBIT ALEGAL DESCRIPTION

Beginning at a point on the West line of 1600 West Street (Hwy. 89) said point also being the Northeast Corner of Barlow Subdivision as recorded with the office of the Utah County Recorder said point also being located South 00 Deg. 17' 02" East along section line 287.19 feet and West 68.24 feet from the East Quarter Corner of Section 16, Township 8 South, Range 3 East, Salt Lake Base and Meridian and running thence South 87 Deg. 10' 40" West along the North line of said subdivision 563.25 feet; thence South 00 Deg. 47' 35" East along the West line of said subdivision 306.88 feet; thence South 87 Deg. 45' 01" West 98.94 feet; thence South 00 Deg. 47' 35" East 419.68 feet; thence North 87 Deg. 21' 31" East 656.71 feet to the West line of said street; thence South 00 Deg. 21' 43" West along said West line 56.08 feet; thence South 87 Deg. 21' 31" West to and along an existing fence line 555.32 feet; thence South 87 Deg. 05' 56" West along an existing fence line 827.10 feet; thence North 12 Deg. 48' 36" West 15.47 feet; thence South 87 Deg. 09' 50" West along an existing fence line 1720.74 feet to a rail road right of way fence line; thence North 28 Deg. 00' 09" West along said fence line 516.04 feet; thence North 88 Deg. 45' 00" East 455.96 feet; thence North 35 Deg. 00' 00" East 662.45 feet to an existing fence line as called for in the Warranty Deed Recorded with Entry Number 54624:2000, Recorded July 13, 2000; thence North 86 Deg. 40' 55" East along said fence line 47.35 feet; thence North 86 Deg. 29' 12" East along said fence line 677.96 feet; thence North 10 Deg. 41' 08" East 566.85 feet to said fence; thence South 85 Deg. 35' 35" West 894.41 feet to the East line of Slant Road; thence North 47 Deg. 28' 05" East 1191.97 feet; thence South 43 Deg. 17' 10" East 177.21 feet; thence South 89 Deg. 52' 22" East 736.06 feet to the Northwest Corner of Lot 14, Alvey Business Park Amended, as Recorded with the office of the Utah County Recorder; thence South 00 Deg. 10' 46" East along the West line of said lot, 191.79 feet; thence South 89 Deg. 38' 54" East along the South line of said Business Park 526.89 feet; thence South 00 Deg. 17' 25" East 136.18 feet; thence South 89 Deg. 52' 22" East 300.406 feet to the West line of said 1600 West Street; thence Southerly the following 4 calls along the West line of said street: South 00 Deg. 17' 25" East 159.41 feet, North 86 Deg. 17' 40" East 2.95 feet, South 416.62 feet, West 0.54 feet, South 386.81 feet to the point of beginning.

# EXHIBIT "B"



NO.	DESCRIPTION	DATE
1	REVISION	
2	REVISION	

**MAPLETON WEST MASTERPLAN**  
FULL STREET LIGHTS



**J.W. Robinson Architect, AIA**  
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