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WHEN RECORDED RETURN TO:

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05/30/2008 12:59 PM \$201.00
Book - 9612 Pg - 2409-2473
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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
HEATHERWOOD VILLAGE
A Planned Unit Development**

(including Association Bylaws)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "Declaration") is made on the date evidenced below by Bach Land and Development LLC, a Utah Limited Liability Company (hereafter "Declarant").

RECITALS

A. The Declarant is the owner of certain land in Salt Lake County, Utah, shown on the plat entitled "Heatherwood Village P.U.D. Subdivision", and attached hereto as Exhibit A (the "Property"), "Heatherwood Village" to be recorded among the Recorder's Office of Salt Lake County, Utah, Recorder's Office (the "Recorder's Office"), in Plat Book 2007, No. 10233492.

B. The Property is also subjected to a Master Declaration and this Declaration of Covenants, Conditions and Restrictions shall be in addition to all provisions of the Master Declaration.

C. It is the intention of the Declarant to develop and improve the land, subject to this Declaration as a residential community of detached single family homes, and to insure a uniform plan and scheme of development therein.

D. It is further intended that ultimately sixty-three (63) individual family dwellings will be constructed in Heatherwood Village. Declarant, however, has no legal obligation to construct the number of homes set forth herein, but does provide this information as an initial projection to homeowners.

E. A homeowners association shall manage the affairs of the detached single family homes and the interests of the members, collectively.

F. The Property shall be subject to the Utah Community Association Act, U.C.A. §57-8a-101 et seq., as may be amended from time to time.

G. Unto that end, the Declarant has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens (collectively, the "Covenants"), as set forth herein for the following purposes:

(1) To insure uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined).

(2) To insure the maintenance of aesthetic quality and property values of the Lots (as hereinafter defined) in the Community (as hereinafter defined).

(3) To facilitate the sale by the Declarant, its successors and assigns, of the land in the Community by reason of its ability to assure such purchasers of uniformity.

(4) To make certain that the Covenants shall apply uniformly to all Lots for the mutual advantage of the Declarant, the Owners and any Mortgagee (as such capitalized terms are defined herein) and to all those who may in the future claim title through any of the above.

(5) To provide for the benefit of the Owners, the preservation of the value and amenities in the Community, and the maintenance of certain reserved open spaces (if any) and common areas, including but not limited to easements, charges and liens, herein below set forth, and for the creation of an association to be delegated and assigned the powers of maintaining and administering the Common Area (as hereinafter defined), and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created upon the Property designated by this Declaration or any Supplemental Declaration; which association shall be incorporated under the laws of the State of Utah, as a nonprofit corporation, for the purpose of exercising the functions mentioned herein.

NOW, THEREFORE, the Declarant does hereby establish and impose upon the Property (as hereinafter defined), the Covenants for the benefit of, and to be observed and enforced by, the Declarant, its successors and assigns, the Association, as well as by all purchasers of Lots, to wit:

ARTICLE I

DEFINITIONS

Section 1.1: "Architectural Control Committee" or "ACC" Shall mean the committee constituted and acting pursuant to Article IX below.

Section 1.3: "Assessment" Shall mean any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of this Declaration, the Bylaws or applicable law.

Section 1.4: "Association" Shall mean the Heatherwood Village Homeowners Association, Inc., comprised of each respective Owner of a Lot in the Subdivision.

Section 1.5: "Board of Directors" or "Board" Shall mean the Board of Directors.

Section 1.6: "Common Area" Shall mean all the real property and improvements located within the Property, other than the Lots and Improvements, as shown on the official plat for the Property, including the Limited Common Area.

Section 1.7: "Common Expenses" Shall mean the actual and estimated expenses of maintenance, improvement, repair, operation insurance and management of the Common Area, expenses of the administration of the Association and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Declaration. Without limiting the generality of the foregoing, Common Expenses shall also include: any commonly metered utility charges for the Property (lighting of the Private Roads); any costs for trash collection and removal not

already provided for by the City of South Jordan; and compensation paid by the Association to managers, accountants, attorneys and other employees.

Section 1.8: "Community Wide Standard" Shall mean the standard of conduct, maintenance, or other activity generally prevailing in the community, as defined by the Board of Directors from time to time.

Section 1.9: "Declarant" means Bach Land and Development, LLC, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property as an entirety, without reservation of any kind; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.

Section 1.10: "Declaration" Shall mean and refer to this Declaration.

Section 1.11: "Development Period" Shall mean the time between the date of recordation of this Declaration with the Recorder's Office and the date on which the administrative control of the Association is turned over to the Owners. The Development Period shall be the earlier of seven (7) years from the recording of this Declaration or the date on which the Declarant has conveyed one hundred percent (100%) of the total number of Lots to be added by Supplemental Declaration to the Owners of the Association, unless control is turned over to the Owners at an earlier time by the Declarant.

Section 1.12: "Family" Shall mean a group of natural persons related to each other by blood or legally related to each other by marriage or adoption and as further defined by local municipal ordinance.

Section 1.13: "Improvement" Shall mean any structure, building, landscaping, garage, fence, wall, non-living or living screen, or other structure of related specifically to landscaping, or other meaningful addition or alteration constructed or added to a Lot or the Common Areas.

Section 1.14: "Landscaping" Shall mean lawn, shrubs, flowers, trees and natural foliage located or placed around a Lot or upon the Common Area.

Section 1.15: "Limited Common Area" Shall mean and refer to those Common Areas designated herein or on the Plat Map as reserved for the use of a certain Residence(s).

Section 1.16: "Lot" Shall mean the Lot, as shown on the Map, and any Improvements made thereto.

Section 1.17: "Map" Shall mean the official subdivision plat map recorded the 27th day of September 2007, as Entry No. 10233492 in Book 2007 at Page 377 of the official records in the office of the Salt Lake County Recorder, State of Utah, as the same may be amended from time to time.

Section 1.18: "Mortgage" Shall mean any instrument creating a lien with respect to a Lot including a mortgage, deed of trust or any similar security agreement.

Section 1.19: "Mortgagee" Shall mean the holder of the obligation secured by a Mortgage.

Section 1.20: "Owner" Shall mean the recorded owner of a fee simple title to any Lot which is a part of the Subdivision. In an event that more than one party shall be the record Owners of a Lot, then for all purposes under this Declaration, all such parties shall be required to act jointly as the Owner of such Lot.

Section 1.21: "Property" Shall mean all the real property described in **Exhibit "A"** hereto, consisting of all Lots and Common Areas of the Subdivision.

Section 1.22: "Residence" Shall mean a single building designed and constructed for residential occupancy to be occupied by a Family.

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ARTICLE II

SUBMISSION & PURPOSE

Section 2.1: *Submission*

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The Property and Lots referred to in **Exhibit "A"** shall be held, sold, conveyed, leased, occupied, resided upon and hypothecated subject to the covenants, conditions and restrictions of this Declaration; which covenants, conditions and restrictions shall run with the land, are established for the purpose of protecting and preserving the value of each and every part of the Property, and which shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof.

Section 2.2: *Purpose of Declaration.*

The purpose of this Declaration is to ensure the use of the Property for attractive residential purposes, to prevent nuisances, to prevent the impairment of the attractiveness of the Property, and to maintain the desired tone and character of the Subdivision, and thereby to secure to each Owner the full benefit, enjoyment and value of their home, with no greater restriction on the free and undisturbed use of their site than is necessary to ensure the same advantages to the other Owners.

ARTICLE III

ANNEXATION

Section 3.1: *Annexation.*

Additional property may be annexed to the Subdivision and brought within the provisions of this Declaration by the Declarant, at any time, without the approval of any Owner or the Association. Even if the period of Declarant control has expired, the Declarant may annex the Additional property without the approval of the existing Owners. To annex additional property to the Subdivision, the Declarant shall record an amendment to this Declaration which shall specify the annexation of the additional property to the Subdivision and which may supplement this Declaration with addition or different covenants and restrictions applicable to the annexed property, as the Declarant may deem appropriate, and may delete or modify as to such annexed property such covenants as are contained herein which the Declarant deems not appropriate for the annexed property. Upon such annexation, the Owners of the Lots within the annexed property shall become members of the Association with all rights, privileges and obligations as all other members. The amendment of this Declaration as authorized by this Section, to annex additional property to the Subdivision, shall be controlled by the provisions of this Section and shall be expressly excluded from the requirements of Section 12.2 of this Declaration.

Section 3.2: *De-Annexation.*

The Declarant shall have the right to delete all or a portion of the Property from the coverage of this Declaration and the jurisdiction of the Association, so long as

the Declarant is the Owner of all of the property to be de-annexed and, provided further, that an appropriate amendment to this Declaration is recorded in the office of the Salt Lake County Recorder.

Section 3.3: *Additional Property.*

The Declarant shall have the right to acquire and develop other such property adjacent to the Property as may be desired by Declarant. Such property may be developed, added to the Property, and made subject to this Declaration in the Declarant's sole discretion as provided in this Article III.

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ARTICLE IV

DECLARANT RIGHTS AND CONTROL

Section 4.1: Administrative Control of Association.

Declarant shall assume full administrative control of the Association through an appointed interim Board of Directors, which shall serve until the Turnover Meeting. The Turnover Meeting shall be held within ninety (90) days of the earlier of the following:

(a) Seven years from the recording of this Declaration; or

(b) The Declarant having conveyed one hundred percent (100%) of the total number of Residences to be developed upon the Property, including any future annexed property.

Declarant may elect to relinquish control of the Association at an earlier time by written notice to Owners and the Turnover Meeting shall be held within ninety (90) days of such notice.

Section 4.2: Other Rights

In addition to any other rights under this Declaration or the Bylaws, as long as Declarant owns at least one (1) Residence within the Property or any Additional property, Declarant:

(a) Sales Office and Model. Shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and

occupy the sales office and models during reasonable hours any day of the week.

(b) "For Sale" Signs. May maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant, at reasonable locations on the Property.

(c) Approval of Amendments. Shall have the right to approve all amendments to the Declaration or Bylaws of the Association proposed by the members.

(d) Subdivision. Shall have the discretion and authority to subdivide and re-subdivide any portions of the Properties and any future annexed property.

(e) Sales. Shall have the right to sell, re-sell, rent or re-rent any portion of the Properties and any future annexed property.

(f) Development. Shall have the right to complete excavation, grading, construction of Improvements and other development activities on the Properties and the Additional property.

(g) Construction. Shall have the right, subject to approval of any applicable governmental agency, to alter construction plans and designs, to modify Improvements and to construct such additional Improvements as Declarant deems advisable.

Section 4.3: Easements Reserved to Declarant.

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Drainage and Utility Easement," "Sewer Easement," "Drainage and Sewage Easement," and "Open Space," or otherwise designated as an easement area over any road or on the Property, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Building or Residence, or in the area or on the area in which the same is located.

(c) Easement granting the privilege of entering upon the Property for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to effect such purposes. Such easements include, but are not limited to any and all easements necessary to create and install improvements, retention ponds, berms, retaining walls or any structure deemed necessary by the Declaration to protect and or modify water drainage.

(d) The reservation to Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Property for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the project and the provision of utility services, and related services and facilities including sales trailers and other such facilities to assist with the Declarant's sales and marketing activities.

(e) The Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Community in, over, through, upon and across any and all of the roads, streets, avenues, alleys, and open space and in, over, through, upon and across each and every Lot in any easement area set forth in this Declaration or as shown on the Plat.

(f) The Declarant, and subsequently the Association, further reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Community except as set forth in this Declaration, or as laid down and shown

on the Plat, without the prior written approval of the Architectural Control Committee.

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(g) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any Structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

(h) Declarant further reserves unto itself, for itself and any Builder and their successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Property, other than those Lots conveyed to Owners, for all purposes necessary or appropriate to the full and final completion of construction of the Community.

The Declarant will take reasonable steps, and will ensure that any Builder takes reasonable steps, to avoid unduly interfering with the beneficial use of the Lots by Owners.

ARTICLE V

ASSOCIATION AND OWNER MAINTENANCE OBLIGATIONS

Section 5.1: *Owner's Responsibility.*

Owners shall be responsible for the maintenance for all interior and exterior surfaces of their respective Residences. Owners must also obtain and maintain general casualty home insurance. Owners shall maintain and be financially responsible for, including concrete repair and replacement, their Limited Common Area driveways and sidewalks. Such obligation also includes patio maintenance.

Owners shall also be responsible for individual Residence utilities; including but not limited to: culinary water, sewer, television, telephone, internet, power, and gas. Owners shall also be responsible for repairing and maintaining any fencing installed by the Owner as permitted by the Architectural Guidelines.

With respect to fences installed by the Declarant, if the needed repairs and/or maintenance is caused by the neglect or fault of the Owner, their tenants, guests or invitees, then the Owner shall be responsible for such repairs and maintenance. Otherwise, the general maintenance and repair costs of Declarant installed fences shall be a maintenance obligation of the Association as provided in Section 5.2. However, the Association reserves the right to charge those owners who benefit from a fence (maintained by the Association) an Individual Assessment to compensate for the increased costs of such an Improvement (See Article X, Section 10.7).

Additionally, the Owner must obtain prior written approval from the ACC to plant,

landscape, or alter the Landscaping as installed and maintained on their Lot at the time of conveyance.

In the event any Owner obtains such approval to plant or landscape any area within their Lot, such Owner shall be responsible for and maintain any alteration. Furthermore, neither the Association, the Board, nor any of its employees, assigns, or agents shall be responsible for any damage or destruction of such alteration that may result from the fulfillment of their duties, including, but not limited to, the maintenance of the Landscaping around individual Residences.

In the event that an Owner fails to fulfill their maintenance obligations as outlined in this section, the Association may, but is not obligated to, perform the Owner's maintenance obligation and assess the cost incurred to the Owner as an Individual Assessment (see Article X).

From time to time, Owners may desire to make certain additions and/or improvements to their adjacent landscaping that was not originally installed by the Declarant. Upon written Board approval, Owners may make limited additions or improvements (for example, fences, flower gardens, vegetable gardens, etc.). However, any such approval must also contain a written agreement between the Association and the Owner(s) describing which party shall be responsible to maintain any such additions and/or improvements. The Association may condition its approval by the Owner(s) assuming maintenance obligations.

If the Owner assumes maintenance obligations, the Owner is responsible for all costs associated therewith.

Section 5.2: Maintenance by Association.

The Association shall maintain all roads located within the Property and shall provide snow removal for all streets, sidewalks, driveways and front sidewalks. Except as stated in Section 5.1, the Association shall maintain, repair and replace fences.

In addition, the Association shall maintain all Landscaping around individual Residences as well as all Landscaping for parks, Limited Common Areas and Common Areas including areas surrounded by a Declarant installed fence which is within the Lot, Common or Limited Common Areas. This shall include the maintenance of all materials such as sod, trees, and shrubs installed by either the Association or the Declarant.

As stated in Section 5.1, any Owner alteration to the Landscaping on their Lot must receive prior written approval from the ACC and the Association shall not be liable for damage, destruction or removal of such alteration.

As stated above, the Declarant shall install and the Association shall maintain fencing around the perimeter of the Property and any partition fences constructed by the Declarant but shall not be responsible for the maintenance or replacement of any fencing which an Owner may install unless such obligation is expressly authorized by the ACC.

The Association shall provide for trash removal for Owner's individual trash receptacles and shall maintain all Common Area lighting throughout the Property. The

Association shall maintain any amenities located on the Property and shall service, maintain, repair and/or replace the Entry Gates.

If an Owner encloses their backyard area of their Lot and allows an animal to use the backyard area on a regular basis, upon notification from the Board and just cause being shown, the Association may refuse to maintain the fence, landscaping and/or yard inasmuch as there are safety, health, or sanitary concerns related to the condition of the Lot/yard. Even in such cases, the Owner is not exempt from paying their full share of the Common Assessment. Owners shall then be responsible to maintain their back yards in a neat and sanitary condition.

The Association shall also provide obtain and maintain the following types of insurance policies:

- (a) Public Liability for the Common Areas;
- (b) Property, fire, and extended hazard for all Common Areas;
- (c) Directors and Officers in an amount not less than \$1,000,000;
- (d) Fidelity Bond in an amount not less than the reserves and operating capital of the Association; and,
- (e) Workmen's Compensation Insurance, if necessary. The Board shall purchase and maintain in effect workmen's compensation insurance for all employees of the Association to the extent that such insurance is required by law.

ARTICLE VI

GENERAL RESTRICTIONS AND REQUIREMENTS

Section 6.1: *Land Use and Building Type.*

Each Lot shall be used exclusively for the construction and occupancy of a Residence to be occupied by a single Family and related Landscaping and other incidental and related Improvements. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single Family dwelling with enclosed, attached front entry garage.

Section 6.2: *Subdivision of Lot.*

No Lot may be divided, subdivided or separated into smaller parcels or combined with another Lot unless approved in writing by the Board.

Section 6.3: *Governmental Regulations.*

All applicable governmental rules, regulations, and ordinances of South Jordan, Salt Lake County or otherwise, must be complied with regarding activities within the Subdivision. When a subject is covered both by this Declaration and a governmental rule, restriction or ordinance, the more restrictive requirements shall be met.

Section 6.4: *Nuisances, Unreasonable Annoyance and Noxious Activities.*

No noxious or offensive activity shall be carried on within the Common Area or within any Residence nor shall anything be done thereon which may be or may become an unreasonable annoyance, nuisance or danger to the Subdivision. Animals kept in or using a back yard area may be deemed a nuisance. Except for legitimate construction and

maintenance purposes, no excessively loud noises, which noises shall be determined at the sole discretion of the Board, shall be permitted in the Subdivision.

Section 6.5: *Signs.*

No signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without the express written approval having been first obtained from the Association; provided, however, that one (1) "for sale" sign not exceeding twenty-four (24) inches in height and thirty-six (36) inches long may be temporarily placed on a Lot by the Owner. The Association may cause all unauthorized signs to be removed. This section shall not apply to any signs used by the Declarant or its agents in connection with the original construction and sale of the Lots.

Section 6.6: *Antennas.*

All television and radio antennas, satellite dishes or other electronic reception devices shall be completely erected, constructed and placed within the enclosed area of the Residence or garage on the Lot, or located and screened so as to not be visible from the Street or an adjacent Lot. Exterior wiring or conduits for satellite dishes or similar devices shall only be permitted on a Residence after Board approval to help ensure aesthetic consistency among the Residences. No unsightly conduits or wiring is permitted. Other exceptions must first be expressly approved in writing by the Board. Notwithstanding the foregoing, all restrictions regarding antennas must comply with the

Federal Communications Commission's "Over the Air Reception Device Rules" and any other applicable federal laws. Notwithstanding anything herein to the contrary, any reception devices, of any kind, installed or mounted on the exterior of a Town Home Building or Residence shall first require the prior written consent of the Board.

Section 6.7: *Animals.*

(a) No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within any Residence, except no more than two (2) dogs, cats, or other household pets provided that they are not kept, bred, or maintained for any commercial purpose. The Owner of any dog or cat must keep such dog or cat on a leash or keep it confined within the boundaries of the Lot and no cat or dog shall be allowed to run free throughout the Property.

(b) Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Property. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from all Common Areas.

(c) An Owner may be required to remove a pet upon receipt of a written notice from the Board of Directors given pursuant to a resolution relating to rules and regulations governing pets within the Property and enforcement of such rules and regulations and provisions of this subsection.

(d) Consistent with Article V and this Article VI, in the event that an Owner has a

permitted animal under this Declaration, the Board may, as a means of preventing such animal from being a nuisance to adjacent Owners, require that such Owner enclose their back yard area, at the Owner's expense. The fencing installed shall be of similar quality and material to that of the perimeter fencing and shall contain a gate so that the Association may access the enclosed area in case of emergency.

As provided for in Article IX of this Declaration, an Owner may, upon prior written approval from the ACC and at the Owner's sole expense, enclose their back yard area as a means to provide a private area for their household pet. Any such approval shall be subject to the same requirements as if the Board had required the installation of the fence.

However, any Owner that is required by the Board or receives prior permission from the Board to enclose their backyard area shall from that time forward be responsible for the maintenance, repair, or replacement of any landscaping contained within such enclosure, including all costs associated therewith.

Furthermore, any Owner that encloses their back yard area shall have an affirmative duty to report to the Board any defects, necessary repairs, or damage to such Common Area that are enclosed by Owner. Failure to report such problems with the enclosed Common Areas, if such problems could have been discoverable by a reasonably prudent resident Owner, shall relieve the Association from liability for any damage caused by such defect, necessary repair, or damage to the enclosed Common Area.

Section 6.8: *Storage of Vehicles and Materials.*

(a) No truck larger than 1-ton, trailer, or recreational vehicle, including but not limited to campers, boats, motor homes, off-road vehicles, motorcycles and similar equipment not used on a regular basis (hereinafter collectively referred to as the "Recreational Vehicles") shall be permitted to be parked overnight or for any period of time longer than twenty-four (24) hours, upon any portion of the Streets, driveway or off-street parking area of a Lot.

Failure to comply with the provisions hereof shall constitute a nuisance. No storage of articles, materials, equipment or vehicles of any nature is permitted in the front portion of any Lot (in front of the front set-back line of the Residence), except that a reasonable number of regularly used passenger cars, in proper working order, may be parked on driveway. Passenger cars may be parked temporarily during day time hours on the Association's roads.

No cars or other vehicles may be parked overnight on any Association road. The Board shall have the right to define "temporary parking" pursuant to its rules and regulations.

(b) No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Lot unless such vehicle is within a garage. A vehicle is deemed in an "excessive state of disrepair" when the Board reasonably determines that its presence offends the Owners of the other Lots. If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written

notice is securely placed on such vehicle or delivered to the responsible Owner by the Board, the Board may have such vehicle removed from the Property and assess the Owner the expense of such removal and any storage necessitated thereby.

(c) The Board shall adopt rules pursuant to Section 6.13 below to govern the enforcement of this subsection which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of this subsection and the cost of any storage thereof.

Section 6.9: *Rubbish and Unsightly Debris, Garbage, etc.*

Notwithstanding any other provision in this Declaration, no Owner shall allow his or her Lot to become so physically encumbered with rubbish, unsightly debris, garbage, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Board or the Association. Within ten (10) days of receipt of written notification by the Association of such failure, the Owner shall be responsible to make the appropriate corrections.

Section 6.10: *Non-Residential Uses Prohibited.*

No part of the Property shall be used for any commercial, manufacturing, mercantile, vending or other such non-residential purposes, provided however, that professional and administrative occupations may be carried on within the Residence so long as there exists no meaningful external evidence thereof. The Declarant, its successors or assigns may use the Property for a model home site, display

and sales office during the construction and sales period.

Section 6.11: *Deviations.*

Deviations from the standards set forth in this Declaration will be allowed only upon written approval by the Board for good cause shown.

Section 6.12: *Swamp Coolers.*

No swamp coolers will be allowed in this Subdivision unless expressly authorized, in writing, by the Board.

Section 6.13: *Restraints on Leasing and Renting.*

(a) The Association may regulate, limit, or prohibit rentals of Residences. However, any rental of the basement of any Residence must receive prior written permission from the Board and must be in compliance with any applicable municipal code (compliance with applicable municipal code shall be the sole responsibility of the Owner and the Board has no duty to ensure compliance when granting permission);

(b) The Association may require the rental of Residences to be conducted through the Association or a designated management company, and may require that all lease agreements be reviewed and approved by the Association or the management company;

(c) Any potential tenants may be screened and approved or denied by the Association or the management company prior to renting the Residence;

(d) Prior to the rental of any Residence, the Owner and the tenant shall execute a

written lease agreement which shall include the following provisions:

(i) The tenant shall agree to comply with all of the terms and conditions of the Association's Declaration and Bylaws;

(ii) The tenant shall agree not to allow or commit any nuisance, waste, unlawful or illegal act upon the premises; and,

(iii) The Owner and the tenant shall acknowledge that the Association is an intended third party beneficiary of the lease agreement and that the Association shall have the right to enforce compliance with the Declaration and Bylaws and to abate any nuisance, waste, unlawful or illegal activity upon the premises;

(e) In many instances, it is necessary to contact the Owner and/or tenant for repairs or other concerns addressed in this Declaration. Consequently, prior to any tenant's occupancy of a Residence, the Owner must provide to the Association the name, address and telephone number (and keep them updated at all times) of both the Owner and the tenant and provide the Association with a copy of the written lease agreement; and,

(f) the Association shall have the right and the obligation to enforce compliance with the Declaration and Bylaws against any Owner and/or occupant of any Residence, and shall have all right and remedies available under state and/or local law, in addition to its rights and remedies as a third party beneficiary under any lease agreement, to enforce such compliance.

Section 6.14: *Association Rules and Regulations.*

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In addition to the restrictions and requirements in the this Article VI, the Board from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Reasonable fines may be levied and collected as an assessment for violations of said Rules and Regulations.

ARTICLE VII
ASSOCIATION

Section 7.1: Organization.

(a) The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the State of Utah (Utah Code Annotated Title 16, as amended). The name of the Association is "Heatherwood Village Home Owners Association, Inc."

(b) The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association.

(c) The affairs of the Association shall be governed by a Board of Directors as provided in this Declaration and the Bylaws.

Section 7.2: Membership.

Each Owner during the entire period of Owner's ownership of one or more Residences shall be a member of the

Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

Section 7.3: Voting Rights.

Each Owner shall have one (1) vote in matters of the Association for each Lot owned as set forth in the Bylaws, for a total of sixty-three (63) votes within the Association. If additional property is annexed hereto, the number of eligible voting rights in the Association will be adjusted accordingly, in proportion to the number of annexed Lots.

Section 7.4: Meetings of Owners.

The Owners shall meet at least annually on the first day of April of each year, or as close to such date as possible, or at such other date as agreed by the Board. The Owners may also hold special meetings when called by the Board of Trustees or by more than fifty percent (50%) of all Owners. Notice of all annual and special meetings shall be provided to each Owner by the Board of Trustees.

Section 7.5: Powers, Duties, and Obligations.

The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers, including without limitation:

(a) Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation 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 obtain and maintain in force the policies of insurance required by the provisions of this Declaration. Such insurance shall include, but it not limited to liability, fidelity and Director and Officer insurance in such amounts as deemed necessary by the Board.

(3) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Community, 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 Officers. Any such Managing Agent shall not concurrently serve as a Member of the Board of Trustees. The compensation of the Managing Agent shall be such as shall be specified by the Officers. 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 is 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, this Declaration and any Bylaws, together with its general powers as a 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 and fines as provided in this Declaration. 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 Lot for the purpose of maintaining and repairing such Lot or any improvement thereon (excluding the interior of a Residence) 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 and charge the cost thereof to the Owner as an Assessment.

(2) 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 enjoy any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Officers, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(3) The Association shall have the power and authority to obtain, contract and pay for, or to otherwise provide for:

(i) Such utility services, including (without limitation) water and sewer if applicable, and any other utilities deemed by the Board to be a Common Expense (not individually metered utilities - such shall be the expense of the Owners);

(ii) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Officers may deem desirable;

(iii) 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

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

(4) The Officers may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Officers 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), unless expressly authorized by a duly adopted resolution of the Board.

(5) In addition to the restrictions and requirements in this Declaration, the Board of Directors from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots

as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Reasonable fines may be levied and collected as an assessment for violations of said Rules and Regulations.

NOTES

ARTICLE VIII
EASEMENTS

Section 8.1: *Utility Easements.*

Easements for installations and maintenance of drainage facilities and public utilities are generally reserved within the Project as follows: 1) all Lots have a ten foot (10') public utility easement on the front and rear; 2) Lots 1 and 47 have an additional ten foot (10') public utility easement along 11170 South; 3) Lots 12 through 32 each have an eight foot (8') easement on each side of the Lot, all other Lots have a five foot (5') easement on each side of the Lot; 4) these easements are in addition to the thirty-seven foot (37') easement for the roadway as well as the sanitary sewer easement as described in **Exhibit A** of this document and as otherwise identified on the Map of the Subdivision. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities.

However, the Board may approve a structure within the easements such as a fence, wall, landscaping, driveway or off-street parking area. It is expressly understood, however, that any such Improvement shall be constructed at the Owner's or the easement holder's sole risk, as the case may be, and as provided in the easement document(s), of having the Improvement partially or wholly removed, dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement areas within each Lot and all Improvements in such areas shall be maintained continuously by the Owner of the Lot, except for those Improvements for

which a public authority or utility company is responsible to maintain.

Section 8.2: *Maintenance.*

The Association shall have an easement for ingress and egress over and through all Lots and Common Areas to the extent necessary to discharge any maintenance and repair obligation set forth in this Declaration.

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ARTICLE IX

ARCHITECTURAL CONTROL COMMITTEE

9.1 Architectural Review.

This Article is intended to provide guidance for the approval of remodeling and other improvements constructed after the Declarant has completed the project:

(a) No Improvement and/or additional Landscaping shall be commenced, erected, placed or altered on any Residence or Lot until an application and construction plans and specifications, showing the nature, shapes, heights, materials, colors and proposed location of Improvements or changes have been submitted to and approved in writing by the Architectural Control Committee ("ACC") as provided in this Article. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of exterior design with the existing improvements and landscaping and as to location with respect to topography and finished grade elevation.

(b) In all cases in which approval of the ACC is required by this Declaration or the Bylaws, the provisions of this article shall apply.

9.2 Membership, Appointment and Removal.

The initial Architectural Control Committee shall be comprised of Declarant or any persons or entities appointed by the Declarant as it determines. The Board shall act as the ACC unless the Board appoints a separate entity to serve as the ACC. In the event that the Board appoints a separate entity to serve as the ACC, there shall be no fewer than three

(3) members and no more than five (5) members. The terms of office for each member of the ACC shall be for one (1) year unless lengthened or shortened by the Board of Directors at the time of appointment.

9.3 Architectural Standards and Guidelines.

(a) Adoption. The procedure and specific requirements for review and approval of an application required under Section 9.1 above may be set forth in design guidelines and standards ("Architectural Standards and Guidelines") adopted from time to time by resolution of the Board of Directors at its sole discretion.

(b) Provisions. The Architectural Standards and Guidelines shall interpret and implement the provisions of this Declaration and the Bylaws for architectural review and guidelines for architectural design of all Improvements, including, but not limited to, decks, porches, awnings, carports, garages, and storage structures, color schemes, exterior finishes and materials and similar features which may be used on the Property and landscaping; however, Architectural Standards and Guidelines may not be in derogation of the minimum standards established by this Declaration and the Bylaws. Furthermore, painting of stucco and other material aesthetic changes must first have Architectural Control Committee approval.

9.4 Majority Action.

A majority of the members of the ACC shall have the power to act on behalf of the ACC,

without the necessity of a meeting and without the necessity of consulting the remaining member or members of the ACC. All decisions rendered by the ACC must be by written instrument setting forth the action taken by the members consenting thereto.

9.5 Duties.

The ACC shall consider and act upon the proposals or plans submitted pursuant to this article.

9.6 ACC Decision.

The ACC shall render its approval or denial decision with respect to the proposal within forty-five (45) business days after it has received all material required by it with respect to the application. All decisions shall be in writing. If the ACC fails to render its decision of approval or denial in writing within such forty-five (45) business days of receiving all material required by it with respect to the proposal, the application shall be deemed approved. Notwithstanding the passage of forty-five (45) days without a decision by the ACC, the proposal shall not be approved until the following events have occurred:

(a) The Owner has sent a certified letter to the Board or ACC requesting a decision with respect to the proposal; and,

(b) The Board or ACC has failed to respond to the Owner's letter within ten (10) days after the Owner receives a certification that the letter has been received by the Board or ACC.

9.7 ACC Discretion.

The ACC may, at its sole discretion, withhold approval of any proposal if the ACC finds the proposal would be inappropriate for the particular Lot or incompatible with the Architectural Standards and Guidelines. Considerations such as siting, shape, size, color, design, height, solar access or other effects on the enjoyment of other Lots and any other factors which the ACC reasonably believe to be relevant, may be taken into consideration by the ACC in determining whether or not to approve any proposal.

9.8 Nonwaiver, Precedent and Estoppel.

Approval or disapproval by the ACC of any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent, waiver or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

9.9 Appeal.

(a) After the Turnover Meeting, or any earlier date that Declarant may designate by written notice to the Association and subject to subsection (b) below, any Owner adversely impacted by action of the ACC may appeal such action to the Board of Directors.

(b) Appeals shall be made in writing within ten (10) days of the ACC's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors within twenty (20) days after receipt of such appeal. The determination of the Board shall be final. If, however, the Board is serving as the ACC,

then the original Board decision is final and there is no right of appeal.

9.10 Effective Period of Consent.

The ACC's approval of any proposal shall automatically be revoked within three (3) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the ACC.

9.11 Determination and Notice of Compliance.

(a) Inspection. The ACC may inspect from time to time, all work performed and determine whether it is in substantial compliance with the approval granted.

(b) Notice of Noncompliance. If the ACC finds that the work was not performed in substantial conformation with the approval granted, or if the ACC finds that the approval required was not obtained, the ACC shall notify the Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of noncompliance and shall require the owner to remedy the noncompliance by a specific date.

9.12 Noncompliance.

(a) Notice of Hearing. If after receipt of a notice of noncompliance pursuant to Section 9.11 above, the Owner fails to diligently commence to remedy such noncompliance in accordance with the provisions of the notice of noncompliance, at the expiration of the third (3rd) day from the date of such receipt of notice, the ACC shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not

less than seven (7) or more than thirty (30) days from receipt of the notice of noncompliance.

(b) Hearing. At the hearing, if the ACC finds that there is no valid reason for the continuing noncompliance, the ACC shall determine the estimated costs of correcting it and may fine the Owner for such noncompliance. After such determination, the ACC shall require the Owner to remedy or remove the same within a period the ACC determines reasonable.

(c) Continued Noncompliance. If the Owner does not comply with the ACC's ruling within the specified period or within any extension of such period as the ACC, at its discretion, may grant, the ACC may either remove the noncomplying improvement or otherwise remedy the noncompliance. The cost of any such action shall be assessed against the Owner and collected as an unpaid assessment.

9.13 Liability.

Neither the ACC nor any member thereof shall be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ACC or a member thereof, provided only that the member has in accordance with the actual knowledge possessed by him or her, acted in good faith. The ACC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

9.14 Fees.

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There is a \$100.00 application fee for material improvements that require Architectural Control Committee approval. In addition to any fees set forth herein, the ACC may charge a reasonable application fee and charge applicants additional costs incurred or expected to be incurred by the ACC to retain architects, attorneys, engineers, landscape architects and other consultants to advise the ACC concerning any aspect of the application or compliance with any appropriate architectural criteria or standards. Such fee shall schedule shall be adopted by Board resolution and shall be collectible as assessments pursuant to this Declaration and the Bylaws.

ARTICLE X

ASSESSMENTS

Section 10.1: *Covenant for Assessment.*

(a) Each Owner, by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments:

(1) Annual common assessments (the "Annual Assessment") as provided in Section 10.2 below.

(2) Special assessments ("Special Assessments") as provided in Section 10.5 below.

(3) Emergency assessments ("Emergency Assessments") as provided in 10.6 below.

(4) Individual assessments ("Individual Assessments") as provided in Section 10.7 below.

(b) Assessments shall be established and collected as provided in this Article. Annual assessment may be collected in monthly, quarterly or other established periodic payments. However, all Owners shall be required to pay the Association pursuant to the period established by the Board.

(c) No Owner may exempt itself from liability for Assessments by abandonment of any Lot owned by such Owner.

Section 10.2: *Annual Budget and Assessment.*

(a) Annual Budget. The Board of Directors shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the landscaping, for the payment of costs incurred by use of the common area street lighting, maintenance, upkeep, and preservation of the Private Roads and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

(b) Determination of Annual Assessment.

(1) The Board of Directors of the Association shall fix the amount of the annual assessment ("Annual Assessment") against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning any assessment period.

(2) The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period.

In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed. The "new assessment" may be increased by the Board to reflect expense items more accurately.

(c) Acceleration of Annual Assessment Balance. If any Owner fails to make their monthly Annual Assessment payment for two consecutive months, the Association may accelerate the total balance of the Annual Assessment to be due in full at the time that the balance is accelerated. Any accelerated balance may be collected in full as any other unpaid assessment under this Declaration.

Section 10.3: Apportionment of Assessments.

Assessments shall be apportioned as follows:

(a) Annual, Special, and Emergency Assessments. All Lots shall pay their pro rata share of the Annual Assessment, Special Assessments and Emergency Assessments commencing upon the date the Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such assessment divided by the total number of Lots.

(b) Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lots benefitted or to which the expenses are attributable as provided in Section 10.7 below.

(c) Payment of Assessments. Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a monthly, quarterly, semi-annual or annual basis or as deemed appropriate by the Board. Any member may prepay one or

more installments of any Assessment levied by the Association, without premium or penalty.

Section 10.4: Personal Obligation and Costs of Collection.

(a) Assessments imposed under this Declaration, together with interest at a rate to be established by resolution of the Board of Directors, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due.

(b) The personal obligation for any delinquent Assessment, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

Section 10.5: Special Assessments.

In addition to the Annual Assessments authorized in this Article, the Association may levy in any assessment year, a special assessment ("Special Assessment"), applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas or Limited Common Areas; provided that such assessment shall first be approved by two-thirds (2/3) of the votes of members of the Association, voting in person or by proxy, at a meeting duly called for such purpose.

Section 10.6: *Emergency Assessments.*

(a) If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall, as soon as practicable, determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and levies the additional assessment ("Emergency Assessment"). The resolution shall specify the reason for the Emergency Assessment.

(b) Any Emergency Assessment in the aggregate in any fiscal year would exceed an amount equal to five percent (5%) of the budgeted expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the members voting in person or by proxy, at a meeting duly called for such purpose.

(c) Emergency Assessments shall be apportioned as provided in Section 10.3 above.

Section 10.7: *Individual Assessments.*

(a) Any expenses benefitting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefitted ("Individual Assessment"). Individual Assessments shall include, but are not limited to:

(1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or rules and regulations of the

Association and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any rules and regulations of the Association.

(2) Any reasonable services provided to an unimproved or vacant Lot by the Association due to an Owner's failure to maintain the same in order to protect the health, safety and welfare of adjoining Lot owners and the Association in general.

(3) Expenses attributable to fence repair and replacement that benefits fewer than all Owners.

Section 10.8: *Transfer Fees*

The following individual assessments must be paid by the new Owner to the Association upon the sale of a Lot, at the time of closing of such Lot, whether an original sale or re-sale:

(1) Transfer Fee in an amount to be determined by the Board as deemed necessary;

(2) Reserve Fund Fee in an amount to be determined by the Board as deemed necessary.

The Board of Directors may, by Board Resolution, increase or decrease the Transfer Fees and Reserve Fund Fee described herein and further re-assign the accounts to which said Transfer Fees shall be allocated. The Board is further authorized, to the extent permitted by law, to record a "Notice of Assessment and Transfer Fee" against all Lots within the Association.

Section 10.9: Reserve Account

The Association shall allocate a reasonable portion of the annual common assessment to a reserve account for the funding of long term maintenance of the Common Area, namely for the maintenance, repair, and re-surfacing of the Private Roads. Notwithstanding the foregoing, the Board shall have discretion to use the reserve account funds for all purposes which the Board deems to be necessary and in the best interests of the Owners. The Board shall use reasonable efforts to fund said reserve account but shall not be held personally liable for any alleged failure to fully fund said account as long as gross negligence or intentional misconduct is not proven in a court of law.

Section 10.10: Nonpayment of Assessments.

Any assessment or portion thereof not paid within fifteen (15) days after the due date (which shall be established by resolution of the Board of Directors):

- (a) Shall be delinquent and shall bear interest from the date of delinquency at the rate, established by resolution of the Board of Directors, not to exceed the maximum rate permitted by law, and
- (b) Shall be subject to a late charge of Twenty Dollars (\$20.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater; and
- (c) If paid by installments, may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days' written notice to the Owner.

Section 10.11: Lien for Assessments.

All Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article X and shall be construed as a real covenant running with the land.

Section 10.12: Subordination of Lien to Mortgages.

(a) The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as provided in subsection (b) of this section.

(b) The sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, nor from the lien of any future assessment.

Section 10.13: Enforcement of Lien.

The Association may establish and enforce the lien for any Assessment, including Annual, Special, Individual or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration or by law or awarded by a court for breach of any provisions of this Declaration, the Bylaws or any rules and

regulations of the Association. The lien may be foreclosed in the same manner as either deeds of trust, mortgages, or in any other manner permitted by Utah law. The collection remedies stated herein are cumulative and the use of one does not preclude the use of other remedies.

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Section 10.14: *Appointment of Trustee*

To the extent permitted by relevant Utah law, the Association and each Owner hereby appoints the attorney of the Association (who has been retained by the Association at the time a foreclosure is initiated) as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., or as may be amended from time to time.

ARTICLE XI

VIOLATIONS AND POWERS OF ENFORCEMENT

Section 11.1: *The Association's Powers of Enforcement.*

Enforcement shall be accomplished by any lawful means, including an action at law or in equity against any person or persons violating or attempting to violate any provision herein, either to restrain violation or recover damages. In the event a legal action is instituted by the Association to enforce compliance with or due to a breach of any of the provisions of this Declaration, the party found to have violated any provision(s) of this Declaration shall be liable to the prevailing party for the prevailing party's legal costs and expenses, including reasonable attorney's fee. Notwithstanding the foregoing, no liability of any nature at all shall attach to the Association, or any member thereof, in acting in good faith pursuant to the provisions of this Declaration.

If after fourteen (14) days written notice, an Owner fails to remedy a violation (the "Defaulting Lot Owner"), the Association may (in addition to other lawful remedies available to it) cause such violation or condition to be remedied and the cost thereof shall be charged to the Defaulting Lot Owner in which event such costs shall be deemed an Individual Assessment to such Defaulting Lot Owner and shall attach as a lien to the Defaulting Lot Owner's Lot, and shall be subject to levy, enforcement and collection by the Association, in accordance with the assessment lien procedure provided for in this Declaration.

Failure to comply with any of the provisions of this Declaration, Bylaws or rules and regulations adopted pursuant thereto shall be grounds for relief which may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought and liberally construed to effectuate its purpose. Any violation of this Declaration shall be deemed to be a nuisance or unreasonable annoyance. Failure to enforce any provisions hereof shall not constitute a waiver of the right to enforce said provisions hereof.

Section 11.2: *Fines.*

The Board shall have the right to levy a reasonable fine, pursuant to a schedule of fines as established by Board resolution, against any Lot or Owner for violations of this Declaration, the Bylaws, and/or rules and regulations. Any fine levied against an Owner shall become the personal obligation of the Owner and shall also become a lien against the Lot. Fines shall be collectable and enforced in the same manner as Assessments or an Individual Assessment as the case may be.

Section 11.3: *Enforcement by Others.*

Additionally and after reasonable notice in writing, an Owner not at the time in default hereunder, or the Association shall have the option of bringing an action for damages, specific performance, or injunctive relief

against any defaulting Owner, and in addition may sue to have enjoined any violation of this Declaration. Any judgment shall include an award of the legal costs and expenses, including a reasonable attorney's fee, entered against the losing party and in favor of the prevailing party.

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Section 11.4: *Rights of Entry.*

The Association shall have a limited right of entry in and upon all Lots and the exterior of all Residences for the purpose of taking whatever corrective action it deems necessary or proper. Nothing in this Section or Article shall in any manner limit the right of the Owner to exclusive control over the interior of his of her Residence.

Section 11.5: *Board Authority.*

The Board shall have the right to enforce any applicable provision hereof in the same manner provided to the Association.

Section 11.6: *Enforcement Remedies Cumulative.*

Each remedy provided in this Declaration shall be cumulative and not exclusive or exhaustive. Suit to recover a money judgment may be maintained without foreclosure or waiving the lien securing the same.

ARTICLE XII

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

Section 12.1: *Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.*

(a) The Association, Declarant, Owners, and all persons subject to this Declaration, agree to encourage the amicable resolution of disputes involving the Property, including without limitation claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, Bylaws, or the Association rules, except for those claims authorized in Section 12.2. All claims not exempt must follow the procedure set forth in Section 12.3.

Section 12.2: *Exempt Claims.*

The following Claims shall be exempt from the provisions of Section 12.3:

(1) any suit by the Association against any Party to enforce the provisions of Article VI.

(2) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of the Articles of the Declaration, Bylaws, and Association rules.

(3) any suit between Owners (other than Declarant) seeking redress on the basis of a claim which would constitute a cause of

action under the law of the State of Utah in the absence of a claim based on the Declaration, Bylaws, or Association rules, if the amount in controversy exceeds \$5,000.00

Section 12.3: *Mandatory Procedures for All Other Claims.*

Any party having a claim ("Claimant") against any other party ("Respondent"), other than a claim exempted from this provision by Section 12.2, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such claim until it has complied with the following procedures:

(1) Notice: The Claimant shall notify each Respondent in writing of the claim ("Notice"), stating plainly and concisely:

(a) the nature of the claim, including date, time, location, persons involved, Respondent's role in the claim and the provisions of this Declaration, the Bylaws, the rules, or other authority out of which the claim arises;

(b) the basis of the claim (i.e., the provisions of the Declaration, Bylaws, rules or Articles triggered by the claim);

(c) what Claimant wants Respondent to do or not to do to resolve the claim; and

(d) that Claimant wishes to

resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the claim.

(2) Negotiation:

(a) Each Claimant and Respondent ("Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the claim by good faith negotiation.

(b) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(3) Mediation:

(a) If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties)("Termination of Negotiation"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of the Neighborhood Mediation Center in Salt Lake City, Utah, or such other independent agency providing similar services upon which the parties may mutually agree.

(b) If the Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations,

Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings.

(c) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, the mediator shall, within five (5) days of the termination of the mediation proceedings, provide the Parties with a written non-binding recommendation for resolution of the Claim ("Mediator's Recommendation").

Section 12.4: *Failure to Successfully Negotiate Claims.*

In the event that the dispute is not resolved after the Parties have made a good faith effort to resolve the dispute through negotiation, the Claimant may bring suit against the Respondent in the appropriate forum.

NOTES

ARTICLE XIII

DURATION AND AMENDMENT

Section 13.1: *Duration.*

amendment.

This Declaration shall continue in full force and effect for a period of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a declaration of termination is recorded with the County Recorder of Salt Lake County, meeting the requirements of an amendment to the Declaration as set forth in Section 13.2. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from membership on the Association as long as this Declaration shall continue in full force and effect.

NOTES

Section 13.2: *Amendment.*

At anytime during the period of Declarant control of the Association, Declarant shall have the unilateral right to amend this Declaration without seeking the approval of the Owners.

Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association either in writing or at a duly called meeting for such purpose.

No amendment to this Declaration shall be effective unless the Board certifies that the amendment was affirmatively approved by the Owners of two-thirds of the voting interests of the Lots in the Subdivision at the time of such

ARTICLE XIV

MISCELLANEOUS

Section 14.1: *Severability.*

Invalidation of any one of these covenants, or any portion thereof by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.

Section 14.2: *Singular Includes Plural.*

Whenever the context of the Declarant requires the same, the singular shall include the plural, and the masculine shall include the feminine.

Section 14.3: *Covenants, Etc. Shall Run with the Land.*

All of the limitations, restriction, easements, conditions and covenants herein shall run with the land and shall be binding in and for the benefit of all the Property and all parties having or acquiring any right, title or interest in the Property and any part thereof and shall insure to the benefit of each owner and are imposed upon the Property as a servitude in favor of each parcel thereof as the dominant tenement or tenements.

Section 14.4: *Limitation on Liability.*

The Declarant, its assignee or delegatee, the Board, and the Association shall not be liable to any other person for action or failure to act hereunder where such action or failure was in good faith. Additionally, the Association shall indemnify all Board members for all acts

absent evidence of intentional misconduct or gross negligence.

Section 14.5: *Paragraph Headings.*

The headings which precede the paragraphs and sub-paragraphs of this Declaration are for convenience only and in no way affect the manner in which any provision hereof in construed.

Section 14.6: *Foreclosure.*

Should any Mortgage be foreclosed on the Property, then the title acquired by such foreclosure and the person or persons who thereupon and thereafter become the owner or owners of such Property, shall be subject to and bound by all the restrictions enumerated herein.


Section 14.7: *Effective Date.*


This Declaration and any amendment(s) or supplemental(s) thereto shall take effect upon its (their) being filed for record in the Office of the County Recorder of Salt Lake County, Utah.

NOTES

IN WITNESS WHEREOF, The President and Secretary of the Association have executed this instrument the day and year first hereinabove written.

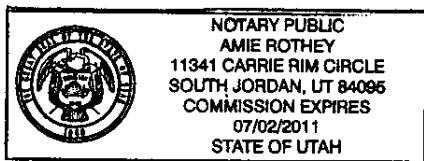
HEATHERWOOD VILLAGE HOME OWNERS
ASSOCIATION, INC.


By: Brian Rindlisbacher
Its President


By: Greg Rindlisbacher
Its Secretary

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

On the 28 day of May, 2008, _____ personally appeared before me
Brian Rindlisbacher and Greg Rindlisbacher, who being by
me duly sworn did that say that they are the President and Secretary of the Association and that
the seal affixed to the foregoing instrument is the seal of said Association and that said
instrument was signed and sealed in behalf of said Association by authority of its Board of
Directors; and each of them acknowledged said instrument to be their voluntary act and deed.



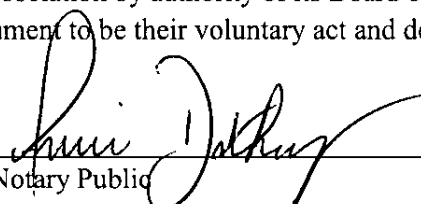

Notary Public

EXHIBIT A

Heatherwood Village P.U.D.

Legal Description:

A parcel of land located in the Northeast Quarter, Section 22, Township 3 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point North 00°07'35" East 2204.69 feet and South 89°55'40" East 488.19 feet from the center of section 22, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°55'40" East 411.88 feet; thence South 02°42'59" West 132.83 feet thence; South 06°11'29" East 103.03 feet; thence South 18°18'49" East 87.88 feet; thence South 06°07'20" East 123.37 feet; thence South 00°43'21" East 78.08 feet; thence South 07°51'59" West 139.28 feet; thence South 10°51'55" West 129.59 feet; thence South 05°44'44" East 80.04 feet; thence South 17°18'34" East 158.35 feet; thence South 12°25'14" East 16.42 feet; thence South 00°34'46" East 66.58 feet; thence South 04°36'42" West 87.96 feet; thence South 00°07'45" West 122.08 feet; thence North 89°58'11" West 469.83 feet; thence north 00°07'35" East 1307.97 feet to the point of beginning.

Property contains: 579,843.02 Sq. ft. or 13.31 Acres

EXHIBIT B

**BYLAWS
OF
HEATHERWOOD VILLAGE
HOMEOWNERS ASSOCIATION
(A Planned Unit Development)**

ARTICLE I

PLAN OF LOT OWNERSHIP

Section 1.1: *Name and Location.*

These are the Bylaws of the Heatherwood Village Homeowners Association (the "Association"). Heatherwood Village is community of single family lot owners that has been subjected to Declaration of Covenants, Conditions and Restrictions for Heatherwood Village recorded as Entry No. _____, in _____, Recorder's Office of Salt Lake County, Utah (the "Declaration"). These Bylaws are initially applicable to the recorded plat of Heatherwood Village, recorded in the Recorder's Office of Salt Lake County, Utah in Plat Book ____, No. ____, folio ____ ("Heatherwood Village").

Section 1.2: *Principal Office.*

The principal office of the Association shall be in a location as determined from time to time by the Board.

Section 1.3: *Purposes.*

This Association is formed to serve as a means through which the Owners may take action with regard to the administration, management and operation of Heatherwood Village, the properties and lots therein.

Section 1.4: *Applicability of Bylaws.*

The Association, all Owners and all persons using the Property shall be subject to these Bylaws and to all rules and regulations which may be adopted pursuant to the Declaration and these Bylaws.

Section 1.5: *Composition of Association.*

The Association shall be composed of all Owners, including Bach Land and Development LLC, a Utah Corporation (the "Declarant"), and the Association, itself, to the extent any of these own any Lot or Lots of the Property.

Section 1.6: *Incorporation of Association.*

(a) The Association shall be incorporated under the Utah Revised Nonprofit Corporation Act. The Articles of Incorporation of the Association shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the Bylaws of the incorporated association. The name of the association shall be "Heatherwood Village Homeowners Association, Inc."

(b) In the event the incorporated Association shall at any time be dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event, all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, which vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any such successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the incorporated association as if they had been made to constitute the

governing documents of the unincorporated association.

NOTES

Section 1.7: *Definitions.*

The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

ARTICLE II

MEETING OF ASSOCIATION

Section 2.1: *Place of Meeting.*

The Association shall hold meetings at such suitable place convenient to the Owners as may be designated by the Board of Directors from time to time.

Section 2.2: *Initial Meeting.*

The initial meeting of the Association shall be the first annual meeting of the Association pursuant to the provisions of Section 2.4 below, unless the Turnover Meeting is called by the Declarant prior to the date of the first annual meeting, in which case the initial meeting of the Association shall be the Turnover Meeting.

Section 2.3: *Turnover Meeting.*

(a) The Declarant shall call the Turnover Meeting pursuant to the provisions of Section 2.6 below. The purpose of the meeting shall be to organize the Association and to elect directors. If the Turnover Meeting is not called within the time specified, the meeting may be called and notice given by any Owner or first mortgagee of a unit.

(b) At the Turnover Meeting, the Declarant shall turn over to the Owners the responsibility for the administration of the Association, and the Owners shall accept the administrative responsibility from the Declarant. The Declarant shall deliver to the Association all records, documents and instruments relating to the Property and the Association.

Section 2.4: *Annual Meetings.*

The first annual meeting of the members shall be held within one (1) month from the date the Declarant turns over control of the Association to the Owners pursuant to Article IV of the Declaration, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at a time and place within the State of Utah selected by the Board of Directors of the Association. If the annual meeting of the members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

Section 2.5: *Special Meetings.*

Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the at least thirty percent (30%) of the members stating the purpose of the meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

Section 2.6: *Notice of Meetings.*

Written notice of each meeting of the members 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 fifteen (15) days but not more than sixty (60) days before such meeting to each member entitled to vote thereat, 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. The notice shall

specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 2.7: *Voting.*

Each Lot shall be allocated one vote in the affairs of the Association as provided in the Section 11.3 of the Declaration. The Board of Directors shall be entitled to vote on behalf of any Lot which has been acquired by or on behalf of the Association, except the Board of Directors shall not be entitled to vote such Lots in any election of directors.

Section 2.8: *Proxies, Absentee Ballots and Rights of Mortgages.*

(a) Proxies

(1) A vote may be cast in person or by proxy. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by resolution of the Board of Directors.

(2) No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution.

(3) No proxy shall be valid if it purports to be revocable without notice.

(4) An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association or to the Board of Directors if a vote is being conducted by written ballot in

lieu of a meeting pursuant to Section 2.14 below.

(5) Every proxy shall automatically cease upon sale of the Lot.

(b) Absentee Ballots. At the discretion of the Board of Directors, a vote may be cast by absentee ballot.

(c) Mortgage Rights.

(1) An Owner may pledge or assign the owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the owner is entitled hereunder and to exercise the owner's voting rights from and after the time that the Mortgagee shall have given written notice of the pledge or assignment to the Board of Directors.

(2) Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

Section 2.9: *Fiduciaries and Joint Owners.*

(a) Fiduciaries. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Lot owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Lot in such capacity.

(b) Joint Owners. Whenever any Lot is owned by two or more persons jointly, according to the records of the Association,

the vote of the Lot may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Lot shall be disregarded completely in determining the proportion of votes given with respect to the matter.

Section 2.10: *Quorum of Owners.*

(a) Except as otherwise provided in the Declaration or these Bylaws, at any meeting of the Association, Owners holding seventy-five percent (75%) of the voting rights, present in person or by proxy, or absentee ballot if permitted under Section 2.8(b) above, shall constitute a quorum.

(b) In the event that a quorum does not convene, the members present at the meeting may adjourn the meeting and provide notice of re-adjournment of the meeting to be held within thirty (30) days of the notice.

At this subsequent meeting, Owners holding fifty percent (50%) of the voting rights, present in person or by proxy, or absentee ballot if permitted under Section 2.8(b) above, shall constitute a quorum. In the event that a quorum does not convene at this second meeting, the members present at the meeting may adjourn the meeting and provide notice of re-adjournment of the meeting to be held within thirty (30) days of the notice.

At this subsequent meeting, Owners holding twenty-five percent (25%) of the voting rights, present in person or by proxy, or absentee ballot if permitted under Section 2.8(b) above, shall constitute a quorum. The adjournment

provisions of this subsection (c) do not apply to action by written ballot in lieu of a meeting under Section 2.14 below.

(c) The subsequent ratification of an Owner, in the action taken at a meeting shall constitute the presence of the person for the purpose of determining a quorum. When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

Section 2.11: *Binding Vote.*

The vote of the holders of more than fifty percent (50%) of the voting rights present, in person or by proxy or absentee ballot if permitted under Section 2.8(b) above, at a meeting at which a quorum is constituted shall be binding upon all s for all purposes except where a higher percentage vote is required by law, the Declaration, or these Bylaws.

Section 2.12: *Order of Business.*

The order of business at annual meetings of the Association shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees, if any;
- (f) Election of directors;
- (g) Unfinished business;

(h) New business; and

(i) Adjournment.

Section 2.13: Meeting Procedure.

Unless other rules of order are adopted by resolution of the Board of Directors:

(a) Meeting of the Association shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.

(b) A decision of the Association may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(c) A decision of the Association is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

Section 2.14: Action By Written Ballot in Lieu of a Meeting.

(a) Action By Written Ballot. At the discretion of the Board of Directors, any action, except election or removal of directors, that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Owner that is entitled to vote on the matter not less than twenty (20) days prior to the date on which the ballots must be received by the Association in order to be counted.

(b) Form and Effect of Ballot

(1) The written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(2) A written ballot may not be revoked.

(c) Information Required in Ballot Solicitations. All solicitations for votes by written ballot must:

(1) State the number of responses needed to meet any applicable quorum requirements and the total percentage of votes needed for approval.

(2) Specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of the following unless the vote is pursuant to the secrecy procedure described in Subsection (d) of this section:

(a) The date on which the Association has received a sufficient number of approving ballots to pass the proposal;

(b) The date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage; or

(c) A date certain on which all ballots must be returned to be counted.

(d) Secrecy Procedure. The Board of Directors may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by:

- (1) A secrecy envelope;
- (2) A return identification envelope to be signed by the owners, and
- (3) Instructions for marking and returning the ballot.

(e) Determination of Vote. The outcome of a vote by written ballot in lieu of a meeting shall be determined by the Board of Directors within forty-eight (48) hours of the deadline for return of ballots, or in the event the ballot return date is postponed, within forty-eight (48) hours of the postponed date. Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

(1) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected.

(2) If approval of a proposed action otherwise would require a meeting at which a specified percentage of owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return or ballots has passed and such required percentage has not been met.

(3) Except as provided in Subsection (e)(4) of this section, votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

(4) Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

(f) Owner Notification of Ballot Results.

Each Owner shall be notified within ten (10) days after the ballots have been counted, by mail or other delivery of written notice, of the results of the ballot meeting or that a quorum of ballots was not returned.

Section 2.15: *Action Without a Meeting*

(a) Any action that may be taken at any annual, regular or special meeting of the Association, may be taken without a meeting and without solicitation of written ballots pursuant to Section 2.14 above, if the action is taken by all of the owners entitled to vote on the action.

(b) The action must be evidenced by one or more written consents describing the action taken, signed by all of the owners entitled to vote on the action, and delivered to the Association for inclusion in the minutes or filing with the Association records.

(c) Action taken under this section is effective when the last owner signs the consent, unless the consent specifies an earlier or later effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

ARTICLE III

BOARD OF DIRECTORS, SELECTION, TERM OF OFFICE

Section 3.1: *Number and Qualification.*

(a) The affairs of the Association shall be governed by a Board of Directors composed of three (3) interim directors as provided in Section 3.2 below. Subsequent to the Turnover Meeting, the Board shall consist of up to five (5) directors elected as provided in Section 3.3 below.

(b) Except for interim directors, all directors must be an Owner or the co-owner of a Lot. However, multiple owners of the same Lot may not serve as directors simultaneously. An officer or employee of a corporation, a partner of a partnership, a trustee of a trust, a personal representative of an estate or an employee of a trust or estate, may serve on the Board if the corporation, partnership, trust or estate owns a Lot.

Section 3.2: *Interim Directors.*

Upon the recording of the Declaration, the Declarant shall appoint an interim board of three (3) Directors, who shall serve until replaced by the Declarant or their successors have been elected by the Owners as provided in Section 3.3 below.

Section 3.3: *Election and Term of Office.*

(a) At the Turnover Meeting called by the Declarant, the interim directors shall resign and the Owners shall elect one class of five (5) directors to serve for two years. Thereafter, the successors to each class of directors shall serve for terms of two years.

(b) Nomination to the Board of Directors and election shall be as specified in Article IV below.

(c) All directors shall hold office until their respective successors shall have been elected by the members.

Section 3.4: *Vacancies.*

Vacancies on the Board of Directors, caused by any reason other than the removal of a director by a vote of the Association, shall be filled for the balance of the term of each directorship by vote of a majority of the remaining directors even though they may constitute less than a quorum. Each person so elected shall be a director until a successor is elected upon expiration of the term for which the person was elected by the other directors to serve.

Section 3.5: *Removal of Directors.*

(a) At any annual or special meeting, other than a meeting by written ballot conducted pursuant to Section 2.14 above, any one or more of the directors, other than interim directors, may be removed, with or without cause, by a majority of the Owners present in person or by proxy, at a duly constituted meeting. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any director whose removal has been proposed by the owners may be given an opportunity to be heard at the meeting.

(b) The Board of Directors, pursuant to Section 6.2(c) below, may declare the office of a member of the Board of Directors to be vacant in the event such member is absent from three (3) consecutive regular meetings of the Board of Directors. The vacancy shall be filled as provided in Section 3.4 above.

Section 3.6: *Compensation.*

No director shall receive compensation for any service he or she may render to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of his or her duties.

Section 3.7: *Action Taken Without A Meeting.*

In the case of any emergency, the directors shall have the right to take any action in the absence of a meeting which they could take a regular or special meeting by obtaining the written approval of all the directors in accordance with U.C.A. 16-6a-813. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE IV

NOMINATION AND ELECTION OF DIRECTORS

Section 4.1: *Nomination.*

NOTES

(a) Method of Nomination. Nomination for election to the Board of Directors, including action under Section 3.4 above, shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting or any special meeting held pursuant to Section 3.5 above. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies

(b) Nominating Committee. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors; and two (2) or more members of the Association. The Nominating Committee shall be appointed by the president of the Association prior to each annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting.

Section 4.2: *Election.*

Election to the Board of Directors shall be by secret written ballot. At the 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 V

MEETINGS OF DIRECTORS

Section 5.1: Organizational Meeting.

(a) Location, Date and Time. The first meeting of a newly-elected Board of Directors shall be held within ten (10) days of election at such place, date and time as shall be fixed by the directors at the meeting at which the directors were elected and no notice shall be necessary to owners or to the newly elected directors in order to legally hold the meeting providing a majority of the elected directors are present.

(b) Procedure and Business. Until the election of new officers, the meeting shall be chaired by the outgoing president, or in the absence of such person, the outgoing secretary, regardless of whether the outgoing president or secretary is as member of the newly constituted board. At the organizational meeting, the Board of Directors shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

Section 5.2: Regular Meetings.

Regular meetings of the Board of Directors shall be held at least quarterly, at such place and hour as may be fixed from time to time by resolution of the Board. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 5.3: Special Meetings.

Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two (2) directors,

after not less than three (3) days notice to each director by mail, including electronic mail if approved by the Board, telephone, or telegraph. The notice must state the time, place, and purpose of the meeting.

Section 5.4: Meeting Procedure.

Unless other rules of order are adopted by resolution of the Board of Directors:

(a) Meeting of the Board of Directors shall be conducted according to the last edition of Robert's Rules of Order published by the Robert's Rules Association.

(b) A decision of the Board of Directors may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(c) A decision of the Board of Directors is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

Section 5.5: Open Meetings, Executive Sessions.

(a) Open Meetings. Except as provided in Subsection (b) of this section, all meetings of the Board of Directors shall be open to Lot Owners. However, no Owner shall have a right to participate in the Board of Directors meeting unless the Owner is also a member of the Board. The president shall have the

authority to exclude an Owner who disrupts the proceedings at a Board meeting.

(b) Executive Sessions. In the discretion of the Board, the following matters may be considered in executive session:

(1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;

(2) Personnel matters, including salary negotiations and employee discipline;

(3) The negotiation of contracts with third parties; and

(4) Collection of unpaid assessments.

(c) Executive Session Procedure.

(1) Except in the case of an emergency, the Board of Directors shall vote in an open meeting whether to meet in executive session. If the Board votes to meeting in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

(2) A contract or an action considered in executive session does not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes.

Section 5.6: Meetings by Telephonic or Electronic Communication.

In the event of an emergency, meetings of the Board of Directors may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Board of Directors participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

Section 5.7: Notice to Owners of Meetings of Board.

For other than emergency meetings, notice of each Board of Directors meeting must be posted at a place or places on the property at least three (3) days prior to the meeting, or notice must be provided by a method otherwise reasonably calculated to inform the Owners of the meeting.

Section 5.8: Waiver of Notice.

Any director may, at anytime, waive notice of any meeting of the Board of Directors in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a director at any meeting of the board shall constitute a waiver of notice by the director, except where the director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all directors are present at any meeting of the board, no notice to directors shall be required and any business may be transacted at the meeting.

Section 5.9: *Quorum and Acts.*

NOTES

At all meetings of the Board of Directors a majority of the existing directors shall constitute a quorum for the transaction of business and the acts of the majority of the directors present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

ARTICLE VI

POWERS, RIGHTS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.1: General Powers and Duties.

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

Section 6.2: Specific Powers.

In addition to powers imposed by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board of Directors shall have the power to:

- (a) Adopt and publish rules and regulations governing the use of the Common Area, including any improvements and amenities located thereon, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.
- (b) Suspend the voting rights and right to use of any recreational facilities located on any Common Area of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations or any provisions of the Declaration.
- (c) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

(d) Employ a manager, independent contractor, or such other individuals, entities or employees as they deem necessary and to prescribe their duties.

Section 6.3: Specific Duties.

In addition to duties imposed by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board of Directors shall have the duty 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 members, or at any special meeting when such a statement is requested in writing by twenty-five percent of the members who are entitled to vote;
- (b) Supervise all officers and agents;
- (c) As more fully provided in the Declaration, to:
 - (1) Fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period;
 - (2) Send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of each Annual Assessment period;
 - (3) Foreclose the lien against any Lots for which Assessments are not paid within thirty (30) days after the due date thereof or to

bring an action at law against the Owner personally obligated to pay the same;

(d) Procure and maintain adequate liability and hazard insurance on property Owned by the Association or maintained by the Association if required by the Declaration or any supplemental declaration annexing Additional property to the Community.

(e) Cause all officers or employees having fiscal responsibilities to be bonded as it may deem appropriate.

(f) Cause to be maintained the Common Area and any other areas shown on the Plat that may be owned by governmental entities who are not maintaining such areas and any other property required to be maintained by the Declaration or any supplemental declaration annexing Additional property to the Community.

(g) Establish and maintain the financial accounts of the Association.

(h) Establish a budget for payment of all Common Expenses of the Association, and institute and maintain a voucher system for payment, which shall require a sufficient number of signatories thereon as may be reasonably necessary to prevent any misuse of the Association's funds.

(i) Prepare and distribute annual financial statements for the Community to each Owner.

(j) At least annually, cause the review of the insurance coverage of the Association as provided in the Declaration.

(k) File the Annual Report with the Utah Secretary of State, Department of Corporations and Commercial Code.

(l) Prepare or cause to be prepared and filed any required income tax returns or forms.

(m) In the Boards' discretion, appoint an Architectural Control Committee, as provided in the Declaration; and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint such other committees as deemed appropriate in carrying out its purposes and employees of this Association, and to see that their duties are properly performed;

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ARTICLE VII

OFFICERS AND THEIR DUTIES

Section 7.1: *Designation and Qualification.*

(a) Designation. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer.

(b) Qualifications. The president and vice-president shall be members of the Board of Directors, but the other officers need not be directors or Owners. Any director may be an officer of the Association.

(c) Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices specified in subsection (a) of this section.

(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.

Section 7.2: *Election and Vacancies.*

The officers of the Association may be elected by the Board of Directors at the organizational meeting of each new board held in accordance with Section 5.1 above or any Board of Directors' meeting thereafter to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal disqualification or any other cause, the Board of Directors shall elect a successor to fill the unexpired term at any meeting of the Board of Directors.

Section 7.3: *Resignation.*

Any officer may resign at any time by giving written notice to the Board, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

Section 7.4: *Removal of Officers.*

Officers shall hold office at the pleasure of the Board of Directors. Upon an affirmative vote of a majority of the members of the Board of Directors any officer may be removed, either with or without cause.

Section 7.5: *Compensation of Officers.*

No officer who is a member of the Board of Directors may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a binding vote of the Owners. The Board of Directors may fix any compensation to be paid to any officers who are not also directors.

Section 7.6: *Duties of Officers.*

The duties of the officers are as follows:

(a) President. The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board of Directors. The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The

president shall have the authority to sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

NOTES

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association, have charge of such books and papers as the Board of Directors may direct, and in general, perform all of the duties incident to the office of secretary.

(d) Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a managing agent, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board of Directors and disbursing funds as directed by resolution of the Board.

ARTICLE VIII

INDEMNIFICATION OF OFFICERS AND DIRECTORS

Each officer and director of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by law against expenses and liabilities reasonably incurred by him or her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a director or officer of the Association. The foregoing right to indemnification shall be exclusive of any other rights to which the director or officer or person may be entitled by law or agreement or vote of the members or otherwise.

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ARTICLE IX

RECORDS AND AUDITS

The Association shall maintain within the State of Utah all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act in the manner prescribed by a resolution adopted by the Board of Directors.

Section 9.1: *General Records.*

(a) The Board of Directors and managing agent or manager, if any, shall keep detailed records of the actions of the Board of Directors and managing agent or manager; minutes of the meetings of the Board of Directors; and minutes of the meeting of the Association.

(b) The Board of Directors shall maintain a Book of Resolutions containing the rules, regulations, and policies adopted by the Association and Board of Directors.

(c) The Board of Directors shall maintain a list of Owners and a list of all Mortgagees of Lots. The list of Owners shall specify whether the Owner is an Owner in Good Standing or a Suspended Owner.

(d) The Association shall retain within this state all records of the Association for not less than the period specified in applicable law, except that:

(1) Documents of a permanent nature such as the following, if available, must be maintained as permanent records of the Association:

(a) The as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;

(b) The original specifications, indicating all subsequent material changes;

(c) The plans for underground site service, site grading, drainage and landscaping together with cable television drawings;

(d) Any other plans and information relevant to future repair or maintenance of the property; and

(e) A list of the general contractor and the electrical, heating and plumbing subcontractors responsible for construction or installation of common areas;

(2) Proxies and ballots must be retained for one year from the date of determination of the vote.

Section 9.2: *Records of Receipts and Expenditures.*

The Board of Directors or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Community, itemizing the maintenance and repair expenses of the Common Area or Association property and any other expenses incurred.

Section 9.3: *Assessment Roll.*

The assessment roll shall be maintained in a set of accounting books in which there shall

be an account for each Lot. The account shall designate the lot number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

Section 9.4: *Payment of Vouchers.*

The treasurer shall pay all vouchers up to One Thousand Dollars (\$1,000) signed by the president, managing agent, manager, or other person authorized by resolution of the Board of Directors. Any voucher in excess of \$1,000 shall require the signature of the president.

Section 9.5: *Financial Reports and Audits.*

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board of Directors to all Owners and to all mortgagees of Lots who have requested the same in writing within ninety (90) days after the end of each fiscal year.

(b) From time to time the Board of Directors, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and Mortgagees of Lots. At any time any Owner or Mortgagee may, at such Owner's or Mortgagee's own expense, cause an audit or inspection to be made of the books and records of the Association.

Section 9.6: *Inspection of Records by Owners.*

(a) Except as otherwise provided in Section 9.7 below, all records of the Association shall be reasonably available for examination by an Owner and any Mortgagee of a Lot pursuant to rules adopted by resolution of the Board of Directors.

(b) The Board of Directors shall maintain a copy, suitable for the purposes of duplication, of the following:

(1) The Declaration, Bylaws and any amendments in effect or supplements thereto, and rules and regulations of the Association.

(2) The most recent financial statement prepared pursuant to Section 9.5 above.

(3) The current operating budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under Subsection (b) of this section.

(d) The Board of Directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

Section 9.7: *Records Not Subject to Inspection.*

Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

(a) Personnel matters relating to a specific identified person or a person's medical records.

(b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.

(c) Communications with legal counsel that relate to matters specified in Subsections (a) and (b) of this section.

(d) Disclosure of information in violation of law.

(e) Documents, correspondence or management or board reports compiled for or on behalf of the association or the board of directors by its agents or committees for consideration by the board of directors in executive session held in accordance with Section 5.5(b) above.

(f) Documents, correspondence or other matters considered by the board of directors in executive session held in accordance with Section 5.5(b) above.

(g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the association.

Section 9.8: *Notice of Sale or Mortgage*

Immediately upon the sale or Mortgage of any lot, the Owner shall promptly inform the secretary or manager of the name and address of the purchaser, vendee or Mortgagee.

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ARTICLE X
ASSESSMENTS

Section 10.1: *Obligation to Pay Assessments.*

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Each member is obligated to pay to the Association Assessments specified in the Declaration which are secured by a continuing lien upon the lot against which the assessment is made.

Section 10.2: *Delinquent Unpaid Assessments.*

Any Assessments or portions thereof which are not paid when due shall be delinquent and subject to the remedies specified in Article XI of the Declaration. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment.

Section 10.3: *No waiver of Assessments.*

No Owner may waive or otherwise escape liability for the Assessment provided for in the Declaration by non-use of the Common Area or abandonment of the Owner's Lot.

ARTICLE XI

AMENDMENTS

Section 11.1: *How Proposed.*

Amendments to the Bylaws shall be proposed by either a majority of the Board of Directors or by Owners holding at least thirty percent (30%) of the voting rights. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon.

Section 11.2: *Adoption.*

Amendments may be approved by the Association at a duly constituted meeting or meeting by written ballot in lieu of a meeting conducted pursuant to Section 2.14 above for such purpose. Subject to Section 11.3 and 11.4 below, a vote of at least a two-thirds (2/3) of the Owners participating in a properly convened meeting, held for such purpose, is required for approval of any amendment.

Section 11.3: *Corrections and Regulatory Amendments.*

Notwithstanding the provisions of Sections 11.2 of this section and any other provision of these Bylaws, and in addition to all other special rights of the Declarant provided in the Declaration and these Bylaws, until the Turnover Meeting, Declarant, unilaterally without the approval or joinder by the Association, Owners, Mortgagee or other person shall have the right to amend these Bylaws in order to:

(a) Correct obvious typographical, mathematical or other similar errors;

(b) Comply with the requirements of any applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States, the State of Utah, Salt Lake County, South Jordan City or any corporation wholly owned, directly or indirectly, by the United States, the State of Utah, Salt Lake County or South Jordan City which insures, guarantees or provides financing for a community such as Heatherwood Village or lots in such a community.

Section 11.4: *Declarant Consent.*

Any amendment must be approved by the Declarant, in writing, until the Turnover Meeting and as long as Declarant owns at least one Lot in the Community.

Section 11.5: *Additional Rights.*

Until the Turnover Meeting, the Federal Housing Administration or the Veterans Administration or the Department of Housing and Urban Development, or any successor agencies thereto, shall have the right to veto amendments while there if any such agency or any successor agencies thereto have approved the Properties, any part thereof, or any Lot, for federal mortgage financing.

Section 11.6: *Execution and Recording.*

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An amendment shall not be effective until certified by the president and secretary of the Association as being adopted in accordance with these Bylaws, acknowledged and recorded with the Recorder's Office of Salt Lake County, Utah.

Section 11.7: *Challenge to Validity.*

No action to challenge the validity of an adopted amendment may be brought more than one (1) year after the amendment is recorded.

ARTICLE XII

MISCELLANEOUS

Section 12.1: Notice.

(a) Association. All notices to the Association or the Board of Directors shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board of Directors may hereafter designate from time to time.

(b) Owners.

(1) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Board of Directors, or if no address has been designated, then to the Owner's Lot.

(2) If a lot is jointly owned or the lot has been sold under a land sale contract, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the lot shall be sufficient.

Section 12.2: Waiver, Precedent and Estoppel.

No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or

estoppel impairing the right of the Association as to any similar matter.

Section 12.3: Invalidity, Number, Captions.

The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

Section 12.4: Fiscal Year.

The fiscal year of the Association shall be determined by the Board in its discretion.

Section 12.5: Conflicts.


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.

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CERTIFICATION

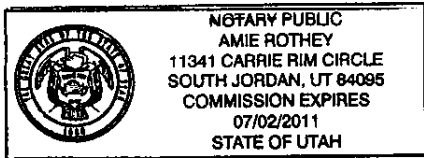
I, THE UNDERSIGNED, do hereby certify that I am the duly elected and acting secretary of the Heatherwood Village Homeowners Association, Inc., a Utah corporation, and that the foregoing Bylaws constitute the original Bylaws of said Corporation, as duly adopted by unanimous written consent of the Board of Directors thereof on this 28th day of May, 2008.

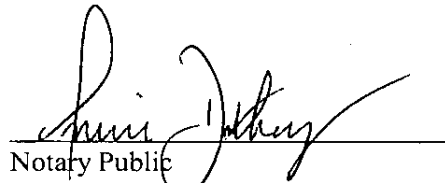
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed ^(MP) the seal of the Corporation this 28th day of May, 2008.


Secretary

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

On the 28 day of May, 2008, personally appeared before me Greg Kindlisbacher, who being by me duly sworn did that say that they are the Secretary of the Association and that the seal affixed to the foregoing instrument is the seal of said Association and that said instrument was signed and sealed in behalf of said Association by authority of its Board of Directors; and each they acknowledged said instrument to be their voluntary act and deed.




Notary Public