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 JEFFERY SMITH
 UTAH COUNTY RECORDER
 2015 Nov 20 10:09 am FEE 158.00 BY SW
 RECORDED FOR SARATOGA SPRINGS CITY

AFTER RECORDING, PLEASE RETURN TO:
 Old Towne Square
 935 West Center Street
 Lindon Utah, 84042

DECLARATION OF COVENANTS,
 CONDITIONS, RESTRICTIONS AND EASEMENTS
 FOR
 HERON HILLS PLANNED RESIDENTIAL DEVELOPMENT

This Declaration of Covenants, Conditions, Restrictions and Easements (“Declaration”) is made and executed by Old Towne Square, (“Declarant”) whose principal address is 935 West Center Lindon, Utah 84042.

RECITALS:

- A. This Declaration of Covenants, Conditions and Restrictions affects that certain real property located in Utah County, Utah described with particularity in Article II below (hereinafter referred to as the "Property").
- B. The Property is an area of unique natural beauty, featuring distinctive terrain.
- C. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.
- D. Declarant is the owner of the Property. The Lots shall be individually owned and the Common Area shall be owned by the Association as set forth in this Declaration.
- E. Declarant has constructed, is in the process of constructing or will construct upon the Property a residential subdivision which shall include certain Lots, Common Area and other improvements. All of such construction has been, or is to be performed in accordance with the plans contained in the Record of Plat Map to be recorded concurrently herewith.
- F. The Property will be developed in several phases or Lots each of which may have unique characteristics, needs and requirements (including varied building types, land use types, etc.), and the Declarant may, from time-to-time , promulgate further conditions, covenants, restrictions and easements as “Supplemental Declarations” relating to such within the Subdivision.
- G. Declarant intends to sell to various purchasers fee title to the individual Lots or Dwelling Units contained in the Property, and a corresponding membership interest in the Association of Lot Owners (which shall own the Common Area), subject to the Record of Survey Map, and the covenants, conditions, restrictions and easements set forth herein.

H. The Project is to be known as Heron Hills.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following uniform covenants, conditions, restrictions and equitable servitudes. The said covenants, conditions, restrictions and equitable servitudes are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth above in the Recitals.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated unless the context clearly requires otherwise.

1. Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, service fees, filing and recordation fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association.
2. Area of Common Responsibility shall mean and refer to the Common Area, together with those areas, if any, which the Association does not own but which by the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, or by contract become the responsibility of the Association.
3. Area of Personal Responsibility shall generally mean and refer to the Lot, together with those areas, if any, which the Lot Owner does not own but which by the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, or by contract become the responsibility of the Lot Owner.
4. Architectural Review Committee or ARC shall mean and refer to the committee established by the Management Committee to review all plans and applications for the construction and modification of improvements on the Property (subject to the rights reserved to Declarant) and to administer and enforce the architectural controls and guidelines. Where the context so requires the term ARC shall mean and refer to the Heron Hills Homeowners Association Design Review Committee.
5. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Association of Lot Owners of Heron Hills ("Heron Hills Homeowners Association") on file or to be filed with the Utah Department of Commerce.
6. Assessments shall mean and refer the allocation of Common Expenses assessed to the Lot Owners.
7. Association shall mean the association of Lot Owners at Heron Hills, ("Heron Hills Homeowners Association") acting as a group in accordance with this Declaration.
8. Base Assessment shall mean and refer to an Assessment levied on all Lots subject to Assessment to fund Common Expenses for the general benefit of all Lots and Lot Owners.
9. Benefitted Assessment shall mean and refer to an Assessment levied against a particular Lot or Lots for

expenses incurred or to be incurred by the Association in accordance with this Declaration.

10. Board of Trustees shall mean and refer to the Management Committee, the body responsible for establishing the operational and corporate policies of the Association and for overseeing their implementation and enforcement. The members of the Board shall be selected as provided in the By-Laws.

11. Builder shall mean and refer to any Person purchasing one or more Lots to construct Dwelling Units thereon for later sale or one or more Lots or parcels of land within the Project to subdivide, develop, and/or resell in the ordinary course of such Person's business.

12. Building shall mean and refer to any of the structures constructed in the Project.

13. Business and Trade shall be construed to have their ordinary and generally accepted meanings, which shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefore. Anything to the contrary notwithstanding, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-Section.

14. By Laws shall mean and refer to the Bylaws of Heron Hills Homeowners Association.

15. Capital Improvement shall mean and refer to each significant fixed physical asset within the Project, included in its original design or construction, or subsequently added to the Project, intended to extend its useful life and/or enhance, upgrade and improve the utility, value or beauty of the Common Area or Facilities. The term Capital Improvement shall be deemed to include the repair, maintenance or replacement of said capital assets, including without limitation the private drive, street lights, exterior street lighting, recreational amenities, fences, walls, sidewalks and common walkways.

16. Capital Improvement Expenses shall mean and refer to all expenses related to the design, purchase, installation, construction, maintenance, repair or replacement of a Capital Improvement.

17. Class B Control Period shall mean and refer to the period during which the Class "B" Member is entitled to appoint a majority of the members of the Management Committee. The Class "B" Control Period shall expire upon the first to occur of the following: (a) when 100% of the Maximum Lots have certificates of occupancy issued thereon and have been conveyed to Class "A" Members; (b) when the Class "B" membership terminates; (c) December 31, 2045; (d) when, in its discretion, the Class "B" Member so determines.

18. Committee shall mean and refer to the Management Committee.

19. Common Areas or Common Areas and Facilities shall mean and refer to all real property defined as "Common Area" including that real property located within the Project in which the Association owns an interest for the common use and benefit of its Members, their successors, assigns, tenants, families, guests and invitees, including but not limited to the following items: (a) The real property and interests in real

property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Lots; (b) All Common Areas and Facilities designated as such in the Plat Map or Maps; (c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Lot Owners, such as telephone, electricity, gas, water, and sewer; (d) All portions of the Project not specifically included within the individual Lots; and (e) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members. Real Property within the Common Area has unique and distinctive and natural open space features. The natural geography of the Real Property within the Common Area allows for two distinct and separate parcels designated herein and in the Plat Map as Common Area Parcel A, and Common Area Parcel B.

20. Common Expense shall mean and refer to: (a) All sums lawfully assessed against the Lot Owners; (b) Expenses of administration, management and maintenance of the Common Area; (c) Expenses agreed upon as common expenses by the Association, including but not limited to maintenance, replacement and repair of the private drive shown on the Map; and (d) Expenses declared common expenses by the Project Documents.

21. Community shall mean and refer to the Project or where the context so requires, the entire Heron Hills subdivision.

22. Community Wide Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community as determined by the Management Committee from time to time.

23. Covenant to Share Costs shall mean and refer to any declaration of easements and/or covenant to share costs executed by Declarant or the Association and recorded in the Office of the County Recorder which creates easements for the benefit of the Association and the present and future owners of real property subject to such Covenant to Share Costs and/or which obligates the Association and such owners to share the costs of maintaining certain property described therein.

24. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Heron Hills.

25. Declarant shall mean and refer to Old Towne Square LLC, and its successors and assigns, unless otherwise indicated.

26. Design Guidelines mean and refer to the architectural, design, development, landscaping, and other guidelines, standards, controls, and procedures, including but not limited to, application and plan review procedures, adopted pursuant hereto and applicable to the Project.

27. Design Review Committee Rules shall mean and refer to the rules adopted by Heron Hills Homeowners Association Design Review Committee or where the context requires, the ARC.

28. Dwelling Unit shall mean and refer to any building or structure or portion of any building or structure situated upon a Lot which is intended for use and occupancy as an attached or detached residence for a

single family.

29. Heron Hills shall mean and refer to Heron Hills, which is a subdivision located in Utah County, Utah.

30. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

31. Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

32. Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Committee. A vote which is for any reason suspended is not an "eligible vote".

33. Exterior Materials shall mean and refer to stone, rock, stucco, wood siding, finished lumber, brick, or other similar materials but shall not mean cinder block or concrete block or aluminum or vinyl siding. Exterior residence materials shall be of a noncombustible material as approved by the Heron Hills Homeowners Association Design Review Committee or its designee.

34. Family shall mean and refer to a group of natural persons related by blood, adoption or marriage, or up to four (4) unrelated persons residing in the same Dwelling Unit and maintaining a common household.

35. Guest shall mean and refer to a visitor, invitee or person whose temporary presence within the Project is approved by or is at the request of a particular resident.

36. Improvement shall mean and refer to every structure and all appurtenances thereto of every type and kind, including but not limited to, buildings, patios, garages, mailboxes, aerials, antennas, satellite dishes, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreak, planting, planted trees and shrubs, poles, signs, exterior air conditioning, water softener fixtures or equipment, pumps, wells, tanks, reservoirs, pipes, lines, meters, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

37. Land shall mean and refer to all of the real property within the Project and subject to this Declaration.

38. Lot shall mean and refer to a portion of the Property, other than the Common Area, Intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plat Map filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any dwelling or living unit, physical structure or improvement constructed on the Lot.

39. Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot.

40. Lot Owner shall mean and refer to (a) the Person(s), including without limitation the Declarant, holding an aggregate fee simple interest in a Lot or, as the case may be (b) the purchaser of an aggregate fee simple interest in a Lot under an executory land sales contract. The term Lot Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.
41. Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.
42. Management Committee shall mean and refer to those Lot Owners (or legal agents of institutional Lot Owners) duly elected and qualified to manage, operate and regulate the Association.
43. Manager shall mean and refer to the person or entity appointed or hired to manage and operate the Project.
44. Map shall mean and refer to the Plat Map on file in the office of the County Recorder of Utah County.
45. Maximum Number of Residential Lots shall mean and refer to the maximum number of residential Lots approved for development within this Project. The Maximum number of residential Lots contemplated by the Declarant as of the date of this Declaration for the entire Project is one hundred and twenty nine (129).
46. Member shall mean and refer to a Lot Owner obligated, by virtue of his ownership of a Lot in the Project to be a shareholder in the Association. In addition and where the context so requires the term Member may mean and refer to a participant in a group. By way of illustration but not limitation this may include membership in the Management Committee or a subcommittee
47. Mortgage shall mean and refer exclusively to either a first mortgage or first deed of trust on any Lot, but shall not mean or refer to a uniform real estate contract, land sales contract or an executory contract of sale.
48. Mortgagee shall mean and refer exclusively to a mortgagee under either a first mortgage or a beneficiary under a first deed of trust on any Lot, but shall not mean or refer to a seller under a uniform real estate contract, land sales contract, or an executory contract of sale.
49. Occupy, Occupies or Occupancy shall mean and refer to staying overnight in a particular Dwelling Unit for at least sixty (60) days during any twelve (12) month period.
50. Office of the County Recorder shall mean and refer to the Office of the County Recorder of Utah County, Utah.
51. Open Space shall mean the areas designated on the official recorded Plat Map as Open Space which areas include areas "where either commercial or residential building of structures is restricted or prohibited" by the Saratoga Springs City Development Code, Section 18 and Section 19 of the Saratoga Springs City Code.

52. Owner shall mean and refer to the Lot Owner.

53. Period of Declarants' Control shall mean and refer to a prior of time commencing on the date this Declaration is recorded and terminating on the occurrence of the Events referred to in Section 13(a)(5).

54. Permanent Resident shall mean and refer to a person who resides in the Project for more than four (4) consecutive weeks or for more than eight (8) weeks in any twelve (12) month period.

55. Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

56. Plans and Specifications shall mean and refer to any and all documents designed to guide or control the construction of an Improvement, or alterations, modifications, changes, additions and the like thereto, including without limitation all documents indicating the size, shape, configuration and/or materials, to be incorporated; all site plans, excavation and grading plans, elevation drawings, floor plans, techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

57. Plat Map shall mean and refer to the "Record of Survey Map or Maps of Heron Hills" on file in the office of the County Recorder of Utah County, as they may be amended from time to time. The Plat Map will show the location of the Lots, Dwelling Units and Common Area.

58. Private Amenity shall mean and refer to certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of or within the Project, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise.

59. Private Way or Private Drive shall mean and refer to those ways, drives or turnabouts within the Project, shown on the Map, not dedicated to any city, county, state or other governmental body politic, entity or agency.

60. Private Yard Area shall mean and refer to the private yard area within a Lot to the rear or in back of or behind the Dwelling Unit.

61. Project shall mean and refer to Heron Hills.

62. Project Documents shall mean collectively the documents governing the Project, including but not limited to the By-Laws, Rules and Regulations, and Articles of Incorporation as well as this Declaration, By Laws, Rules & Regulations, and Articles of Incorporation.

63. Property shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to this Declaration.

64. Record, Recorded and Recordation shall mean and refer, with respect to any document, the recordation of such document in the Office of the County Recorder of Utah County, Utah.

65. Recreational, Oversized or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational, oversized or commercial transportation device of any kind.

66. Single Family Home or Residence shall mean and refer to both the architectural style of a Dwelling Unit and the nature of the residential use thereof or activity permitted therein.

67. Subdivision shall mean and refer to a parcel of land, which has been shown on a final and recorded subdivision plat consisting of two (2) or more Lots.

68. The Heron Hills Homeowners Association Design Review Committee aka Design Review Committee or ARC shall mean the design review committee established by the Management Committee.

69. Total Votes shall mean and refer to the total number of available votes in the Project.

70. Use Restrictions shall mean and refer to the rules and use restrictions set forth below, as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded.

II. SUBMISSION

The Land, described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, and is located in Utah County, Utah, is hereby submitted to the terms, covenants and conditions of, is hereby made subject to, and shall be governed and regulated by, this Declaration. In addition:

The Land is SUBJECT TO the described easements and rights of way, TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Plat Maps or otherwise existing; an easement for each and every Common Area and Open Space as set forth in this declaration, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions, and

restrictions, subject to the COMMUNITY DECLARATION:

1. Description of Improvements. The significant improvements in the Project include, or shall include, residential Lots and Dwelling Units, together with Common Area, landscaping, fences, private drives shown on the Map, trails, and walkways. The Project will also contain other improvements of a less significant nature.
2. Description and Legal Status of the Property. The Lots shall be individually owned and the Common Area shall be owned by the Association.
3. Membership in the Association. Membership in the Association is appurtenant to the ownership of a Lot, and may not be partitioned there from.
4. Conveyance. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

Lot No. _____, contained with the Heron Hills Planned Residential Development, as the same is identified in the Plat Recorded in Entry # _____, and in the "Declaration of Covenants Conditions Restrictions and Easements for Heron Hills Planned Residential Development" Recorded in Entry # _____, of the official Records of Utah County, Utah. TOGETHER with a right and easement of use and enjoyment in and to the Common Area and Private Drive, described, and as provided for, in said Declaration.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Membership in the Association shall not be separated from the Lot; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association shall automatically accompany the transfer of the Lot to which they relate.

5. Use Restrictions.

a) Plan of Development: Applicability: Effect. Declarant has established a general plan of development for the Project as a master planned community in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Project and the vitality of and sense of community within the Project, all subject to the Management Committee's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within Heron Hills, The Project is subject to the land development, architectural, and design provisions described herein, the other provisions of this Declaration governing individual conduct, and uses of or actions upon the Project, and the guidelines, rules, and restrictions promulgated pursuant hereto, as each may be amended from time to time, all of which establish affirmative and negative covenants, easements, and restrictions on the Project. In addition the Project is subject to all rules regulations and building guidelines of Saratoga Springs City and the Saratoga Springs City development code. Except as otherwise expressly provided herein, all

provisions of this Declaration and any rules shall apply to all Owners, occupants, tenants, guests, and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of the Governing Documents.

b) Authority to Promulgate Use Restrictions and Rules. (a) Subject to the terms of this section and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Management Committee may amend the Use Restrictions and may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions then in effect. Notice of any such proposed action shall be posted in a prominent place within the Project or published in the Association's newsletter, if any, at least five (5) business days prior to the Management Committee meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Management Committee meeting prior to such action being taken. Any such action shall become effective after compliance with the requirements set forth below unless disapproved at a meeting by at least 67% of the total Class "A" Members or by the Declarant. So long as the Declarant owns any of the Property, the Declarant may, acting independently, promulgate use restrictions and rules without additional approval required. The Management Committee shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws. If a meeting to consider disapproval is requested by the Members prior to the effective date of such action, the action may not become effective until after such meeting is held. Alternatively, the Class "A" Members, at a meeting duly called for such purpose, may amend the Use Restrictions or adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and previously adopted rules by a vote of at least 67% of the total Class "A" Members and the approval of the Declarant, so long as the Declarant owns any of the Property. Provided, however, at least 30 days prior to the effective date of any such action, a copy of the amendment or rule, specifying the effective date, shall be posted in a prominent place within the Project or published in the Association's newsletter, if any. The Association shall provide, without cost, a copy of the Use Restrictions and rules then in effect to any requesting Member or Mortgagee. Nothing in this section shall authorize the Management Committee or the Members to amend, repeal, or expand the Declaration, the By-Laws, the Articles or the Design Guidelines. Such documents may be amended only as and in the manner provided therein.

c) Owners' Acknowledgment. All Owners are subject to the Use Restrictions and are given notice that (1) their ability to use their privately owned property is limited thereby, (2) the Management Committee and/or the Members may amend the Use Restrictions or adopt rules which modify, cancel, limit, create exceptions to, or expand the Use, and (3) the Declarant may amend the Use Restrictions or other portions of this Declaration. Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

d) Rights of Owners. Except as may be specifically set forth in the Initial Use Restrictions, neither the Management Committee nor the Members may adopt any rule in violation of the following provisions:

1) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.

2) Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.

3) Household Composition. No rule shall interfere with the freedom of occupants of the Dwelling Units to determine the composition of their households, except that the Declaration limits residency in a Dwelling Unit to a single family and the Association shall have the power to limit the total number of occupants permitted in each Dwelling Unit on the basis of the size and facilities of the Dwelling Unit.

4) Activities Within Dwelling Units. No rule shall interfere with the activities carried on within the confines of Dwelling Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Dwelling Units, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Dwelling Unit, or that create an unreasonable sounds of annoyance.

5) Allocation of Burdens and Benefits. No rule shall alter the basis for allocation of financial burdens among various Lots over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from adopting generally applicable rules for use of Common Area and Open Space, or from denying use privileges to those who abuse the rules applicable to the Common Area and Open Space, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of Assessments.

6) Alienation. No rule shall prohibit the leasing or transferring of any Lot, or require consent of the Association or Management Committee for leasing or transferring of any Lot; provided, the Association or the Management Committee may require a minimum lease term of up to twelve (12) months. The Association may require that Owners use lease forms approved by the Association (or include specific terms in their leases), and may impose a review or administration fee on the lease or transfer of any Lot.

7) Reasonable Rights to Develop. No rule or action by the Association or Management Committee shall unreasonably impede Declarant's right to develop in accordance with the approved subdivision, including, but not limited to, the rights of the Declarant as set forth herein.

8) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only and shall not require the removal of any property which was being kept on the Property prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law. The limitations in this subsection shall

apply to rules only; they shall not apply to amendments to this Declaration.

9) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple Ownership of his Lot. There shall be no requirements concerning who may own a Lot, it being intended that they may and shall be owned as any other property rights by persons. This is a residential community and as such the Lots shall be used only for residential and agricultural purposes, except as expressly set forth below.

10) Title to the Common Area. The Common Area, described with particularity in Exhibit "C" which is attached hereto and incorporated herein by this reference, shall be owned by the Association.

11) Mandatory Association. Each purchaser of a Lot by virtue of his acceptance of a deed or other document of conveyance shall automatically become a Member of the Association.

12) Joint or Common Easements with Neighboring Subdivisions, Project or Developments. The Declarant, for itself and its successors in interest (including but not limited to the Association), hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement agreements with or to convey to the owners or developers of adjoining subdivisions, projects or developments any and all reasonable and necessary utility easements or rights of way for gas, water, power, sewer, storm drain systems or the like under, over, across or through the Project. The Declarant, for itself and its successors in interest further reserve the irrevocable and exclusive right, without additional consent required, to enter into easement agreements with or to convey to the owners or developers of property adjacent to Heron Hills, any and all reasonable and necessary maintenance and access easements or rights of way under, over, across or through the Private Drive shown on the Map.

13) Member's Easements and Rights of Way. Every Member of the Association shall as an Owner and its successors, assigns, tenants, families, guests and invitees, shall have the right and non-exclusive easement to use and enjoy the Private Drive and Common Area subject to the rules adopted by the Association and the restrictions set forth in the Conservation Easement and Easement reserved for the Member's of the Association provided for in this Declaration Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions: (a) The right of the Association to limit the number of guests and residents; and (b) The right of the Association to suspend the voting privilege (c) the right of the Association to enforce the easements and rights of way set forth in this Declaration. During the Developer's period of development of the Project, any such dedication or transfer shall be effective only if approved in writing by the Declarant.

14) Rules and Regulations. The Management Committee shall have the power and authority to adopt, amend or repeal administrative and house rules and regulations, and architectural guidelines, from time to time.

15) Prohibited Activities. The following activities are prohibited within the Property unless expressly authorized by, and those subject to such conditions as may be imposed by, the Management Committee:

(a) Posting of signs of any kind, including posters, circulars, campaign signs, political signs, and bills, except those required by law and except as permitted by the Management Committee, Design Guidelines or the Declaration, or any Lot, Open Space, or right-of-way;

(b) Unauthorized use of lakes, ponds, streams, or other bodies of water within the Project. The Association shall not be responsible for any loss, damage, or injury to any Person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within or adjacent to the Property;

(c) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Dwelling Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Dwelling Units which it owns;

(d) Activities which materially disturb or destroy the air quality within the Property or which result in unreasonable levels of sound or light pollution;

(e) Disposal of any oil, gas, or lubricants, or other hazardous materials (as may be determined in the Management Committee's reasonable discretion and as defined by applicable law) anywhere within the Property;

(f) No garage, patio, porch or lawn sale shall be held on any Lot, except that a Lot Owner may conduct such a sale if the items sold are only his own furniture, furnishings and belongings, not acquired for purposes of resale, if such sale is held at such time and in such manner as not to disturb any other resident within the Association and if such sale is held in full compliance with all applicable governmental ordinances, statutes, laws, rules, regulations and resolutions.

16) Prohibited Conditions. The following shall be prohibited within the Project:

(a) Excessive exterior lighting on any Lot, including lighting which causes unreasonable glare, unless necessary for public safety purposes on, or lighting of Private Amenities. The Management Committee shall in its sole discretion determine whether any exterior lighting is considered excessive.

(b) All landscaping shall be maintained in accordance with the Community Standard. Without limiting the generality of any of the foregoing provisions, the Management Committee shall be permitted to establish and enforce reasonable

restrictions and guidelines with respect to noise levels originating from a Lot and with respect to the placement and use of noise making apparatus on any Lot. No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Property, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace. No odors shall be permitted to arise or emit from any Lot, which are offensive or detrimental to any neighboring property, as determined in the discretion of the Management Committee.

Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction consistent with the Community Wide Standard. During construction periods, trash and debris shall not be permitted to accumulate and shall be removed or placed in appropriate trash containers on a daily basis. Supplies of brick, block, lumber and other building materials shall be piled only in such areas that do not restrict travel or common access to other adjoining lots or property. The Declarant, for so long as it owns any property in the Project, and, thereafter, the Management Committee, in its sole discretion) shall have the right to determine the existence of any such nuisance.

(c) Animals. No animals, livestock, birds, insects or poultry of any kind shall be raised, bred, or kept on any Lot, except that not more than two (2) domesticated dogs and/or cats, or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owner's Lot. Owners shall be responsible to clean up after their animals on both private Lots and Common Areas.

17) Diseases and Insects. Owners shall not permit anything or condition to exist upon any Lot that is likely to induce, breed, or harbor infectious plant diseases.

18) Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk, Private Drive, pedestrian pathway, or other area from ground level to a height of ten feet (10') without prior approval of the Management Committee.

19) Swimming Pools. In addition to any requirements set forth by the Declarant or the Management Committee or in the Design Guidelines, no swimming pool, spa, pond, or other man-made body of water may be constructed, installed, or maintained on any Lot in violation of any applicable local government pool ordinances, including, but not limited to, the Utah County Swimming Pool and Protective Enclosure criteria. This shall include compliance with any requirements as to the construction and maintenance of walls or fences.

20) Parties Bound. The Project Documents shall be binding upon all Owners and residents, their family members, guests and invitees by virtue of their accepting a deed or other document of conveyance, or possession of, or entering upon a Lot or the Project.

21) Nuisance. It shall be the responsibility of each Owner and resident to prevent the creation or maintenance of a nuisance in, on or about the Project. For purposes of this section a "nuisance" includes but is not limited to the following:

(a) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot;

(b) The storage of any item, property or thing that will cause any Lot or the Open Space to appear to be in an unclean or untidy condition or that will be noxious to the senses;

(c) The storage of any substance, thing or material upon any Lot or in the Open Space areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

(d) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Open Space areas;

(e) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

(f) Creating or allowing too much noise in, on or about any Lot or Open Space, especially after 10:00 p.m. and before 6:00 a.m.; and

(g) Creating or allowing too much traffic in, on or about any Lot or Open Space, especially after 10:00 p.m. and before 6:00 a.m.

22) Removing Garbage, Dust & Debris. No rubbish, trash, refuse, waste, dust, debris or garbage (hereinafter the "garbage") shall be allowed to accumulate so as to become a nuisance. During the week, all garbage shall be placed into plastic bags or other acceptable receptacles and deposited into designated garbage cans or dumpsters; individual garbage cans shall not be placed or stored so as to be visible from the street, other Dwelling Units or the Open Space except on garbage pick-up day; and on garbage pick-up days, garbage cans shall not be left out in the designated garbage can pick-up area for a period longer than twenty-four (24) consecutive hours.

23) Firearms, Incendiary Devices and Graffiti. The use or discharge of firearms and incendiary devices, or the painting of graffiti, within the Project is prohibited. The term firearm is limited to automatic weapons or semi-automatic weapons.

24) Temporary Structures. No Owner or resident shall place upon any part of the Project for a period of 30 days or more, any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Committee. Anything to the contrary notwithstanding and until the occurrence of the Events referred to herein, the Developer may install and use temporary structures in the development of the Project and marketing of the Lots or Units.

25) Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections. The property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or resident in violation of the Rules adopted by the Management Committee or Architectural Review Committee, without the prior written consent of the Management Committee. The Management Committee may alter or remove any objects planted or placed in violation of this item.

26) Garages; Storage and Parking of Motor Vehicles, Trailers, and Boats. Each Dwelling Unit constructed upon a Lot shall contain a garage. The driving, parking, standing and storing of motor vehicles, trailers, and boats in, on or about the Project shall be subject to the following:

- (a) Any traffic and parking rules and regulations as may be adopted by the Management Committee from time to time;
- (b) No overnight or lengthy parking is allowed on the Private Drive within the Project;
- (c) No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, minivan, boat, trailer, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any Lot, structure, building, or driveway, or so as to create an obstacle or potentially dangerous condition;
- (d) By driving a motor vehicle into the Project, each vehicle owner and driver is deemed to have consented to be bound by and subject to this section.
- (e) A motor vehicle, trailer, and boat parked in violation of this Declaration may be impounded or towed by the Management Committee, without further notice, and at the Owner's sole risk and expense.

27) Insurance. Nothing shall be done or kept in, on or about any Lot or the Open Space which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Project over what the Management Committee, but for such activity, would pay.

28) Laws. Nothing shall be done or kept in, on or about any Lot or Open Space, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

29) Damage or Waste. No damage to, or waste of, the Open Space shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

7. Easements: Drainage, Support, Access, Maintenance and Repair.

a) The following easements and rights of way are hereby RESERVED for and GRANTED to the Association:

1) Easements of Encroachment. Declarant reserves unto itself, so long as it owns any property in the Project, easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with this Declaration) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of the Declarant.

2) Easements for Utilities, Etc. Declarant reserves unto itself so long as it owns any property in the Project, and grants to the Association an easement for the purpose of access and maintenance upon, across, over, and under all of the Property to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, meter boxes, telephone, gas, and electricity. The Declarant and/or the Association may assign these rights to any local utility supplier, cable company, security company or other company providing a service or utility to the Project subject to the limitations herein. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Dwelling Unit on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. Declarant specifically grants to the local utility suppliers easements across the Project for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Dwelling Unit on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Management Committee or Declarant. The exercise of this easement by any party other than the Association shall be subject to prior notice to the Association, which shall be permitted to coordinate and supervise access to the Project by the grantee of the easement. The exercise of the

easement also shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

3) Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, an easement over the Private Drive for the purposes of enjoyment, use, access, and development of Declarant's property, whether or not such property is made subject to this Declaration.

4) Easements for Cross-Drainage. Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Project; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Project without the consent of the Owner(s) of the affected property, the Management Committee, and the Declarant as long as it owns any property in the Project.

5) Risk of Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Project, including each Lot and Dwelling Unit, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Management Committee, officers, or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry into a Dwelling Unit shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Lot or Dwelling Unit to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Management Committee, but does not authorize entry into any Dwelling Unit without permission of the Owner, except by emergency personnel acting in their official capacities.

6) Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Project, including each Lot or Dwelling Unit to (a) perform its maintenance responsibilities, and (a) make inspections to ensure compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules. Except in emergencies, entry into a Dwelling Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. The Association also may enter a Lot or Common Area to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, any Supplemental Declaration, the By-Laws, the Design Guidelines for Heron Hills, or the rules. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefited Assessment.

7) Rights to Surface Water, Groundwater, Stormwater Runoff, Affluent, and Water Stored Underground. Declarant hereby reserves for itself and its designees all rights to surface water which are appurtenant to the Project. Declarant hereby reserves for itself and its designees all rights to groundwater, storm water runoff, affluent, and water stored in all underground storage facilities located or produced within the Project. Each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include an easement over the Project for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and affluent. This Section may not be amended without the consent of the Declarant and the reservations made and rights created pursuant to this Section shall survive the termination of this Declaration. Neither the Declarant nor any Owner shall be deemed by this reservation, or the consolidation of water rights to be made pursuant to this reservation, to abandon any right to water which is appurtenant to or which may be exercised in connection with the Project.

8) Easements for Maintenance, Drainage and Flood Water. Declarant reserves for itself and the Association, and their designees, the nonexclusive right and easement, but not the obligation, to enter upon any pond and streams located within the Project to (1) construct, maintain, and repair pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (2) construct, maintain, and repair any wall, dam, or other structure retaining water; and (3) remove trash and other debris there from and fulfill their maintenance responsibilities, if any, as provided in this Declaration. Declarant, the Association, and their designees shall have an access easement over and across any of the Project abutting or containing any portion of any of the ponds and streams to the extent reasonably necessary to exercise their rights under this Section. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences. In addition, the Declaration reserves for itself and its successors and assigns:

(a) A non-exclusive easement over, across, through, above and under the Lots and the Open Space for the operation, maintenance and regulation of the Open Space, amenities and facilities;

(b) A reciprocal easement on, over, under, through and across all Lots and Open Space for the drainage of surface waters on, over, under, through and across the Project. The Declarant may establish a sub drain and storm drainage system designed to serve the entire Project (the "Master Sub drain and Storm Drain System"). No Lot Owner shall interfere with the Master Sub drain and Storm Drain System established by the Declarant, or its successors or assigns. Each Lot Owner shall be responsible to develop his Lot in a manner consistent with the Master Sub drain and Storm Drain System, and so as not to detract there from or interfere therewith, or the Established Drainage Pattern on any other Lot in the Project. No changes to the Established Drainage Pattern on any Lot shall be permitted without the prior written consent of the Management Committee. For purposes of this Section, the term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities and improvements in existence at the

time such Lot is conveyed to a home purchaser by the Declarant, its successor or assign. The cost of all improvements, maintenance, repairs and replacements of the sub drain and storm drainage system located outside of the Lot but within the Project shall be the responsibility of the Association. If the Association or the Lot Owners fail to properly manage, maintain or replace the sub drain and storm drainage system, Heron Hills or its successor in interest shall have the right, but not the obligation to maintain the systems, and to charge the cost thereby incurred to the Association. The Association shall not have the authority to change, by vote, alienation, alteration, transfer, sale, or otherwise, the use of the currently existing areas and structures designed to control storm water runoff unless the consent of Heron Hills has first been obtained in writing. Heron Hills is hereby granted the right to enforce these restrictive covenants.

b) The following easements and rights of way are hereby RESERVED for the benefit of Declarant and the Lot Owners and GRANTING a third party beneficial right to the City of Saratoga Springs:

1) Conservation Easement/ Common Area. Declarant owns certain real Property as designated in the Plat Map as Sensitive Lands, a Common Area. A Conservation Easement will be reserved and Declarant intends that the conservation values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with the conservation values of the Property.

2) Purpose of Easement/Common Area. It is the Purpose of this Easement to assure that the Property will be retained forever predominantly in its natural, scenic, open space condition. Declarant intends that this Easement will confine the use of the Property to such activities that are not inconsistent with the purpose of this Easement. The Easement shall grant the rights to preserve and protect the Property, enter at reasonable times to monitor compliance with and enforce the terms of the Easement, to prevent activity or use of the Property that is inconsistent with the purpose of the Easement, and to place signs on the Property relating to the conservation values and purposes of the Easement.

3) Easements in Favor of City. Some or all of the Lots and Association Maintenance Areas will be subject to permanent nonexclusive easements in favor of Saratoga Springs City for various purposes, including for emergency vehicular ingress and egress, maintenance of publicly owned facilities, for landscape maintenance, for sidewalks as shown on the Plat Map, for the Sewer Easement as shown on the Plat Map, and for the Trail Easement as shown on the Plat Map.

4) Prohibited Activities. The following improvements and activities shall be specifically prohibited in the Conservation Easement Area, noxious or offensive activities of any kind, any activity which is or which may become a nuisance, and dumping or storage of refuse, garbage or other waste or any other use not permitted herein and specifically prohibited by Saratoga Springs City Development Code for developable open space, use of motorized vehicles, exploration and drilling for and extraction of oil and gas, burning materials on the Property, hunting or trapping for any purpose, any agricultural,

commercial, recreational, or industrial use of the Property.

5) Duration. The Easement, covenant, restrictions and other provisions shall be of perpetual duration.

6) Amendment. No amendment or changes will be allowed to title and definitions created herein to the common parcels.

7) No Partnership. Nothing in this Easement shall be deemed or construed to create the relationship of principal and agent or partnership or joint venture or of any other similar association between the Heron Hills, the Declarant and the City of Saratoga Springs, Utah.

c) The following easements and rights of way are hereby RESERVED for and GRANTED to the Members of the Association:

1) Member's Easements and Rights of Way. Every Member of the Association, its successors, tenants, families, guests and invitees shall have the right and non-exclusive easement to use the Private Drive for ingress and egress to the Lots within the Project. Every Member of the Association, its successors, tenants, families, guests and invitees shall have the right and non-exclusive easement to use and enjoy Common Areas for the purposes set forth in this Declaration, however, no right of access to, over or under private lots to access the Common Areas is conveyed or implied. All access to Common Areas will be through public improved streets or the shared common drive only. No other access will be allowed. Such rights and easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions:

(a) The right of the Association to limit the number of guests, invitees and residents;

(b) The right of the Association to suspend the voting privilege of an Owner;

(c) The right of an Owner to limit views as a result of residence or structures constructed on their Lot, which residences or structures must be approved by the Design Review Committee and;

(d) The right of the Association to maintain regulate and enforces use of the Private Drive and Open Space and to collect assessments from the Owners to insure, maintain, repair and replace the Private Drive and to insure and maintain the Open Space.

8. Liability of Owners and Residents For Damages. Any Owner or resident shall be liable to the Association or other Owners or Residents for damages to person or property in the Community caused by his negligence.

9. Encroachments. In the event that any portion of a Lot, Building or Dwelling Unit encroaches or comes

to encroach upon another Lot, Building or Dwelling Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

10. Management Committee. The Association shall be managed by a Management Committee which shall be comprised of at least one (1) and no more than three (3) members. Until the termination of the Period of Declarant's Control, the Declarant shall have the exclusive and irrevocable right to appoint all of the Members of the Committee and their successors or replacements. At the first Annual Homeowners Meeting after the termination of the Period of Declarant's Control, the Members of the Committee shall be elected by the Owners for a term of two years.

11. Status and General Authority of Committee. After the termination of the Period of Declarant's Control, any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers:

a) To Enter. The management committee shall have the power and authority to enter into or upon any Lot to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the residents.

b) Grant Easements. Subject to the restrictions imposed by the Conservation Easement, the authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Area for purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

c) Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment.

d) Standing. The power to sue and be sued.

e) Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

f) Transfer Interests in Real Property. The power and authority to exchange convey or transfer any interest in real property, so long as it has been approved by at least Seventy five percent (75%) of the members in the Association.

g) To Purchase. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least Seventy five percent (75%) of the members in the Association.

h) To Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least Seventy five (75%) of the members in the Association.

i) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration.

j) Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Members of the Association or residents not on the Committee, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Committee meetings.

k) Assignment or Leasing of Parking Spaces. It is intended that parking spaces, if any are established by the Association, are for the exclusive use of guests and visitors; however, if in the sole opinion of the Management Committee, whose decision shall be binding and conclusive, there are excess guest or visitor parking spaces, then the Committee may elect to temporarily assign or lease any excess parking spaces to residents.

l) Borrow and Collect Money. The power and authority to borrow money and pledge assets of the Association, so long as it has been approved by at least Seventy five (75%) of the members in the Association.

m) Right to Rent, Lease or Make Available. The right of the Association to rent, lease, or make available without charge for any purpose (including, without limitation, public meetings of governmental authorities) any portion of the Common Area Parcel A on a short-term basis to any Person approved by the Association for the exclusive use of such Person and such Person's family, guests and/or invitees; and

n) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

12. Delegation of Management Responsibilities. The Committee may delegate some of its management responsibilities to a professional management company, an experienced on-site manager, independent contractors, through service contracts, or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of more than ninety (90) days, no such contract shall be for a term greater than one (1) year.

13. Classes of Membership & Voting Allocations. The Association shall have two (2) classes of

membership -- Class A and Class B, described more particularly as follows:

a) Class A. Class A Members shall be all Owners with the exception of the Class B Members, if any. The votes of Class A Members are subject to the following restrictions:

1) One Vote. Each Lot shall have one (1) vote based upon its undivided percentage of ownership interest;

2) Subject To Assessment. No vote shall be cast or counted for any Lot not subject to assessment;

3) Multiple Owners. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.

4) Leased Lot. Any Owner of a Lot which has been leased may in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

5) Class B. Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Lot owned. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the termination of the Period of Declarant's Control, to wit, at such time as:

(a) Lots Sold. Four (4) months after seventy five percent (75%) of the Dwelling Units (constructed upon the Lots) have been sold; or

(b) Ten Years. Ten (10) years from the effective date of this Declaration; or

(c) Election. When, in its sole discretion, Declarant so determines. From and after the termination of the Period of Declarant's Control, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. At such time, the Declarant shall call a meeting, in the manner described in the By Laws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

14. Lists of Lot Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Committee shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such

person, and the Lot which is owned by him or her; (b) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity; and (c) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Utah County, Utah. The Committee may for all purposes act and rely on the information concerning Lot ownership in its records or, at its option, the records of the county recorder. The address of any Owner shall be deemed to be the address of the Lot owned by such person unless the Committee is otherwise advised in writing.

15. Assumption of Risk. The Association may, but shall not be obligated to, sponsor Certain activities or provide facilities designed to promote the health, safety, and welfare of Owners and occupants. Notwithstanding anything contained herein or in any of the Governing Documents, neither the Association, the members of the Management Committee, the officers of the Association, the management company of the Association, nor the Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of; the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Project, including all Common Areas and all recreational facilities, if any. Neither the Association, the members of the Management Committee, the officers of the Association, the Association's management company, nor the Declarant shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Project. Each Owner and Occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of utility lines or utility sub-stations and further acknowledges that neither the Association, the members of the Management Committee, the officers of the Association, the Association's management company, nor the Declarant have made any representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility substations. No provision of the Governing Documents shall be interpreted as creating a duty of the Association, the members of the Management Committee, the officers of the Association, the management company of the Association, or the Declarant to protect or further the health, safety, or welfare of any Person(s), even if the funds of the Association are used for any such purpose. Each Owner by virtue of his or her acceptance of title to his Lot and each other Person having an interest in or lien upon, or making any use of, any portion of the Project (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, the Management Committee, the Association's management company, and the Declarant, their directors, officers, committee and Management Committee members, employees, agents, contractors, subcontractors, successors, and assigns from or connected with any matter for which the liability has been disclaimed.

a) Docks & Boat Slips. Heron Hills docks and boat slips are a Common Area element owned by the Association. Disputes are to be resolved by the Management Committee with the advice and

consent of the Board. All persons who rent a boat slip must be Owners.

1) Renting a Boat Slip. Owners of Lots 125-129 may rent a boat slip from the Association for a fee for a term of two (2) years. The Board will establish dock slip rental fees. The fees are subject to change by the Board provided thirty (30) days' notice is given to Owners. Slip rental fee payment is due in full to the Association by January 31 of the calendar year in which the slip will be rented. If the Association does not receive the slip fee payment by the due date, the slip must be vacated immediately and the slip is available for rental through a lottery application by the remaining Lot Owners in the Association. The Board can revoke this slip rental privilege at any time, provided thirty (30) days written notice is given, should any Association rule be violated. Owners of Lots 125-129 are guaranteed one boat slip per Owner. If an Owner of Lots 125-129 relinquishes its right to rent a boat slip, the remaining Owners of the Association may participate in the lottery for the rental of the boat slip. If a boat slip rental occurs during the year, the fee will be charged on a pro-rated basis in one- month increments and such partial-year payments must be made in full before the slip can be rented.

2) Lottery for a Boat Slip. Owners desiring a permit for a boat slip must submit a lottery application to the Association. Lottery applications are available only to all Owners. Boat slips in excess of those reserved for Owners of Lots 125-129, and the boat slips which the Owners of Lots 125-129 relinquish, will be assigned by a lottery for a term of one (1) year. The lottery will be a random number generator so that no priority is given to any Owner for the slip rental. After the expiration of the term, the boat slip will be placed back into the lottery for rental. The Board will establish dock slip rental fees. The fees are subject to change by the Board provided thirty (30) days' notice is given. Slip rental fee payment is due in full to the Association by January 31 of the calendar year in which the slip will be rented. If the Association does not receive the slip fee payment by the due date, the slip must be vacated immediately and the slip is available for rental by the remaining Lot Owners in the Association. The Board can revoke this slip rental privilege at any time, provided thirty (30) days written notice is given, should any Association rule be violated.

3) All slip renters agree to abide by all Association Rules and Regulations, as well as all pertinent Rules and Regulations of Utah Lake and Sovereign Land Rules as applicable to all boaters in Utah with regarding to boat registration stickers, providing proof of insurance, and use. All Owners are responsible for any damage to the docks, boat slips, boats, and persons caused by themselves or their guests. Any personal property stored or left on the slips shall not be the responsibility of the Association.

4) Slip renters may not loan out or sublet their slips or boats.

5) The Association assumes no liability or responsibility for any damage to personal property including but not limited to boats, kayaks, canoes, and the like.

b) No Liability for Boats. The Association assumes no liability concerning watercraft operations, maintenance, storage or ownership. All boaters must comply with applicable rules, regulations,

requirements of the Board and of the State of Utah.

16. Capital Improvements and Table. The Management Committee shall prepare a Table of Capital Improvements, which shall contain a list of foreseeable expenditures for capital improvements within the Area of Common Responsibility. The Table shall be included in every annual budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Committee for the replacement of capital assets as they age. Expenditures by the Association for capital improvements to the Project shall be subject to and governed by the following:

a) Committee Discretion/Expenditure Limit. Capital improvements to the Project which cost ten percent (10%) or less of the Total Annual Operations Budget and do not materially alter the nature of the Project, may be authorized by the Management Committee alone.

b) Homeowner Approval/Expenditure Limit. Any capital improvement, the cost of which will exceed such amount, must, prior to the commencement of construction, be authorized by at least a majority of the Owners.

c) Homeowner Approval/Changing the Nature of the Project. Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) of the undivided ownership interest in the Project.

17. Recycling Programs. The Management Committee may establish a recycling program and recycling center within the Project, and in such event all occupants of Dwelling Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

18. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Management Committee shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include snow removal, landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Management Committee shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association.

19. Change of Use of Common Area. Change of use of any portion of the Common Area shall require approval by 100% of the Owners and to the extent applicable written approval from the City of Saratoga Springs, Utah.

20. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view

over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

21. Relations with Adjacent Project. Adjacent to or in the vicinity of the Project may exist projects which have been or, in the future, may be developed as independent commercial and/or residential areas. The Declarant or the Association may enter into a Covenant to Share Costs with all or any of the owners of such adjacent or nearby commercial and/or residential areas which allocates access, maintenance responsibilities, expenses, and other matters between the Association and such property owners. Unless annexed in the manner set forth herein, the owners of real property adjacent to or nearby the Property shall not be entitled to vote on Association matters, and shall not be subject to assessments or other conditions or restrictions set forth in this Declaration.

22. Operation, Maintenance and Alterations. The Lots and Common Area shall be maintained by the Lot Owners and the Association. The Association shall have the obligation to maintain, repair, and replace the Common Area and all improvements located thereon; provided, however, that the expense of any extraordinary maintenance, repair, or replacement of the Common Area which is caused by the intentional or negligent act or omission of an Owner, its family, guests or pet, shall be paid by such Owner. Each Owner shall have the obligation at his or her expense to maintain, in the case of damage or construction to repair and/or replace his or her Lot and all improvements thereon. Any such maintenance, repair, or replacement by an Owner shall be subject to approval by the Association.

23. Association Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- a) all Common Areas;
- b) all water service facilities and drainage facilities within the Area of Common Responsibility;
- c) all arterial sidewalks and any sidewalks that are not the responsibility of any Owner; or any local government entity;
- d) walls and fences constructed by the Declarant which serve as perimeter walls for the Project or which separate any Lot from a Common Area, whether or not located on a Lot; provided, the allocation of responsibility for the maintenance and repair of party walls and party fences;
- e) landscaping and irrigation systems, and signage within streets and rights-of-way within or abutting the Project to the extent maintenance by any local government is not consistent with the Community Wide Standard, and any streetlights that are not included in a streetlight improvement district;
- f) landscaping and other flora within any public utility easements;
- g) any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, any

plat of any portion of the Project, or any contract or agreement for maintenance thereof entered into by the Association;

h) any other item designated as a common responsibility or responsibility of the Association herein;

i) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property shall be identified by written notice from the Declarant to the Association. The Association's responsibility shall terminate at such time as Declarant revokes the privilege of use and enjoyment by written notice to the Association;

j) the Private Drive;

k) The fence along Redwood Road trail, as indicated on the Plat, which shall be constructed six feet tall semi-private tan or beige vinyl and reduced to a height of three feet within the clear site triangle at intersections of Redwood Road; and

l) The Open Space along Redwood Road at approximately 3250 South Redwood Road, Saratoga Springs, Utah, as designated on the Plat Map as Open Space.

24. Owner's Responsibility. Each Owner shall maintain his Lot, Dwelling Unit, and all other structures, barns, garages, parking areas, landscaping, and other improvements comprising the Lot, excluding the Private Drive, in a manner consistent with the Community-Wide Standard and all applicable covenants, the Design Guidelines for Heron Hills and the Use Restrictions, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Each Owner shall be responsible for maintaining and repairing any sidewalk adjacent to any portion of his or her Lot in accordance with the Community-Wide Standard. In the event an Owner fails to maintain or repair the sidewalks adjacent to his or her Lot, the Association may, but shall not be obligated to, take any enforcement action provided in this Declaration, including levying Benefited Assessments. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with the Declaration. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

25. Snow and Ice Accumulations. Snow and ice accumulations on the Private Drive shall be removed by the Association. Owners shall remove all ice and snow accumulations on roadways, driveways on their Lots unless a variance is granted by the Management Committee in writing.

26. Garbage Removal. The Association shall arrange for garbage pickup with Saratoga Springs City or, in the alternative, contract privately for garbage removal. Each Owner shall make his garbage can or receptacle available for pick up on the designated day each week; however, trash receptacles may not be left so as to be visible from any street or drive for a period in excess of twenty-four (24) hours, and when not placed on the street or drive for pick up garbage cans or receptacles shall be located in a place not visible from the street, drive, or another Dwelling Unit.

27. Party Walls and Party Fences. Each wall and fence built by the Declarant or a Builder as part of the original construction on any Lot shall constitute a party wall or party fence (herein referred to as a party structure) if:

a) any part of which is built upon or straddling the boundary line between two (2) adjoining Lots or between a Lot and the Common Area; or

b) which is constructed within five (5) feet of the boundary line between adjoining Lots, between a Lot and the Common Area, between a Lot and any public street or other property not subject to this Declaration, or between the Common Area and any public street or other property not subject to this Declaration, has no windows or doors, and is intended to serve as a privacy wall; or

c) which, in the reasonable determination of the Management Committee, otherwise serves and/or separates two adjoining Lots or a Lot and the Common Area, regardless of whether constructed wholly within the boundaries of one (1) Lot. The Owners of any Lot served by a party structure shall own that portion of the party structure lying within the boundaries of such Owner's Lot and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the party structure lying within the boundaries of the property adjoining his or her Lot. Each Owner shall be responsible for maintaining property insurance, providing Coverage for that portion of any party structure lying within the boundaries of such Owner's Lot and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss. With respect to a party structure between Lots, the responsibility for the repair and maintenance of the party structure and the reasonable cost thereof shall be shared equally by the adjoining Lot Owners; provided, however, any damage to a party structure resulting solely from the actions of any Owner shall be repaired at the sole cost of such Owner. To the extent damage to a party structure from fire, water, soil settlement, or other casualty is not repaired out of the proceeds of insurance, any affected Owner may restore it. If other Owners thereafter benefit from the party structure, they shall contribute to the restoration cost in equal shares without prejudice to any Owner's right to larger contributions from other users under any rule of law. Any Owner's right to contribution from another Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title. With respect to party structures between Lots and the Common Area areas, between Lots and any public street, and between Lots and other property not subject to this Declaration, the Association shall be responsible for all maintenance and repair thereof, except that an Owner shall be responsible for painting and making cosmetic repairs to the portion of the party structure, other than any wrought iron comprising such party structure, facing his or her Lot. The Association shall be responsible for all maintenance and repair, including painting and cosmetic repairs, of all wrought iron comprising such party structures. The Association shall have an easement over any affected Lot to perform its maintenance responsibilities hereunder. Notwithstanding the above, unless otherwise agreed upon with the owner of property which is not subject to this Declaration, the Association shall maintain that portion of any party structure facing such property. With respect to any party structure between a Common Area and any public street or other property which is not subject to this Declaration, unless otherwise agreed upon with the owner of such property, the Association shall be solely responsible for maintaining and repairing such party structures. The costs incurred by the Association in maintaining and repairing party structures pursuant to this Section shall be a

Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from any Owner deemed to have caused the condition in need of repair pursuant to this Declaration, other recorded covenants, or agreements with such Persons. Notwithstanding the above, no Owner may remove a party structure or make structural or design changes to a party structure without first obtaining the written approval of all Owners of affected Lots and The Heron Hills Homeowners Association Design Review Committee. This Section shall not apply to any party structure which separates the interiors of adjoining Dwelling Units. The rights of the Owners of adjoining Dwelling Units with regard to such party structures shall be governed by plats showing the boundaries of each of the adjoining Dwelling Units, and any specific covenants, conditions, and restrictions recorded with respect to such Dwelling Units.

28. Standard of Care - Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition, consistent with Community Standards. If a dispute arises between a Lot Owner or resident as to the condition of a Lot, the decision of the Management Committee shall be final and conclusive.

29. Standard of Care - Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with Community Standards and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the Management Committee from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be properly pruned and trimmed. In a word, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project.

30. Neglect. If the Committee determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Private Drive is caused through the willful or negligent act of any Owner, his family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense.

31. Assessment. Such costs as are incurred by the Association in the performance of an item included in the Area of Personal Responsibility shall be added to and become a part of the assessment to which such Owner and Lot is subject, and shall be secured by a lien against his Lot regardless of whether a notice of lien is filed.

32. Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Committee. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days.

33. Emergency Situation. If the Committee determines that an emergency exists, then notice and the

opportunity to cure the default is not necessary.

34. Optional Repairs. The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

35. Right of Entry. The Association or its agents or employees shall have a right to entry upon or into any Lot or Common Area as it deems necessary and shall not be liable for trespass or invasion of privacy for such entry or work.

36. Changes to Areas of Personal or Common Responsibility. The Management Committee may, in its sole discretion, add items to subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Lot Owners.

37. Common Expenses. Each Owner, upon receipt of a deed to a Lot, shall pay his Assessments subject to and in accordance with the restrictions set forth below; provided, however, anything to the contrary notwithstanding, the Developer shall not be obligated to pay Assessments until such time as any residential structure, building or dwelling unit is substantially complete and a permanent certificate of occupancy has been issued or, in the alternative, the Developer elects in writing to commence payment, whichever first occurs.

a) Purpose of Common Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Committee.

b) Creation of Assessments. The Assessments shall pay for the common expenses of the Association as may be from time to time specifically authorized by the Management Committee. Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed. The Assessments may be calculated differently from Lot to Lot depending on the size of the Lot and the location of the Lot within the Project. The calculation shall be made by the Management Committee under its complete discretion.

c) Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Management Committee shall prepare and deliver to the Owners a proposed Budget which shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

d) Basis. Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated Common Expenses growing out of or connected with the maintenance and operation of the Private Drive and Common Area areas and the Association.

e) Apportionment. The common profits of the property shall be distributed among, the common expenses shall be charged (and voting rights shall be allocated) to the Lot Owners equally

pursuant to Exhibit "B" attached.

f) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

g) Payment of Assessments. The Management Committee has the sole authority and discretion to determine how and when the annual Assessments are paid.

h) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed, accruing interest, late Assessments and collection costs, including attorneys Assessments. Provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under an executory contract of sale such as a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (1) the Owner of both the legal and equitable interest in any Lot, (2) the owner of record in the offices of the County Recorder of Utah County, Utah, and (3) both the Buyer and Seller under any executory sales contract or other similar instrument.

i) Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days written notice of any changes.

j) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Committee.

k) Reserve Accounts. The Committee shall establish and maintain at least two (2) reserve accounts: one to pay for unexpected operating expenses and the other to pay for capital improvements. The reserve accounts shall be funded out of regular Assessments.

l) Acceleration. Assessments shall be paid in the manner and on dates fixed by the Committee who may, at its option and in its sole discretion, elect to accelerate the entire annual Assessment for delinquent Owners. If, however, the annual Assessment is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the committee, at its option and in its sole discretion, may elect to decelerate the obligation.

m) Statement of Assessments Due. Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request shall be deemed conclusive evidence that all

Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$25.00 for the issuance of such certificate.

n) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled.

o) Termination of Utility Service. At the discretion of the Committee, the utility service to any Owner paid for by Assessments may be terminated if the Owner is in arrears on his obligation to pay assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

p) Suspension of Right to Vote for Non-Payment. At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

38. Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

a) Committee Based Assessment. So long as the special assessment does not exceed the sum of One Thousand and 00/100ths Dollars (\$1,000.00) (the "Special Assessment Limit") per Lot in any one fiscal year, the Committee may impose the special assessment without any additional approval.

b) Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association. The Committee in its discretion may allow any special assessment to be paid in installments.

39. Benefit Assessments. The Management Committee may assess an Owner in a particular area provided the Owner has the choice to accept or reject the benefit:

a) Benefit Only To Specific Lot. If the expense benefits less than all of the Lots, then those Lots benefited may be so, and the Benefit Assessment shall be equitably apportioned among those Lots according to the benefit received.

b) Unequal or Disproportionate Benefit. If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be so assessed, but the Benefit Assessment shall be equitably apportioned among all Lots according to the benefit received. Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

40. Individual Assessments. Individual Assessments shall be levied by the Management Committee against a Lot and its Owner to pay, compensate or reimburse the Association for: (a) fines levied and costs incurred in enforcing the Project Documents; (b) costs associated with the maintenance or repair of

the Private Drive and/or Common Area damaged by an Owner or resident or which falls within the Area of Personal Responsibility as defined above; (c) any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents; and (d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

41. Collection of Assessments. The following restrictions apply to collections:

a) Time is of the Essence. Time is of the essence and all Assessments shall be paid promptly when due.

b) Delinquent Assessments. Any Assessments which are not paid when due are delinquent and a lien against the Lot affected shall attach automatically, regardless of whether a notice of lien is recorded.

c) Late Assessments and Accruing Interest. Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of twenty five Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of One and 1/2 percent (1.5%) per month shall accrue on all delinquent accounts. The Committee may, in its sole discretion, change the amount of the late fee or waive late Assessments and accruing interest but is not required to do so.

d) Notice of Delinquency. The Association shall give a notice of delinquency to any Owner who has not paid his Assessments in a timely manner.

e) Notice of Lien. If any Assessment is a notice of lien evidencing the unpaid amounts, accruing interest, late charges, attorney's fees, the cost of a foreclosure or abstractor's report, and any other Additional Charges permitted by law should be filed with the County Recorder. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. It may be executed by the Association's attorney, manager, Committee Member or other designated agent.

f) Foreclosure of Lien and/or Collection Action. If any Assessments remain unpaid, the Association may, as determined by the Board of Directors or Committee, institute suit to collect the amounts due and/or to foreclose the lien.

g) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

h) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Area areas or the abandonment of his Lot.

i) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or

perform some function required to be taken or performed by the Association or committee under this Declaration or the By Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

j) Application of Payments. All payments shall be applied as follows: Additional Charges, delinquent assessments and current assessments.

k) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board of Directors or Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's Assessments, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

l) Appointment of Trustee. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

m) Attorney in Fact. Each Owner by accepting a deed or other document of conveyance to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Lot, if the Lot is rented and Owner is delinquent in his assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

42. Liability of Management Committee. The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney's Assessments reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he or she may be a party by reason of being or having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Committee may also be Members of the

Association), and the Association shall indemnify and forever hold each such officer and member of the Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Committee, or former officer or member of the Committee, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and directors insurance coverage to fund this obligation, if such insurance is reasonably available. The Association may obtain such additional insurance as it deems necessary or appropriate. The Association shall secure and maintain comprehensive public liability insurance insuring the Association against any and all liability incident to the ownership or use of the Common Areas. The limits of such insurance shall not be less than Five Million Dollars (\$5,000,000.00) covering all claims for death, bodily injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage, non-owned and hired automobiles, liability for property of others, a personal injury endorsement, and coverage for any other liability or risk customarily covered with respect to projects similar to the Project in construction, location, and use.

43. Architectural and Design Standards -- Generally. No improvements (including without limitation all clearing, excavation, grading and other site work), exterior alteration of existing improvements (including painting), placement or posting of any object or thing on the exterior of any Lot, Dwelling Unit, other structure or the Common Area areas, fences, signs, flags, banners, antennae, clotheslines, playground equipment, lighting, pools, temporary structures, and artificial vegetation), planting or removal of landscaping materials, or installation or removal of an irrigation system shall take place except in compliance with this Declaration, the Use Restrictions, and the Design Guidelines for Heron Hills and with the approval of The Heron Hills Homeowners Association Design Review Committee. Any Owner may remodel, paint or redecorate the interior of structures, including the Dwelling Unit, on his or her Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to this Declaration and approval as set forth below. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Architectural and Design Guidelines for Heron Hills shall not apply to the activities of the Declarant but shall apply to the Common Area areas. Nothing contained herein or in any other provision of any of the Governing Documents shall be construed to prevent the erection or maintenance by Declarant or its duly authorized agents of structures, improvements, flags, banners, signs, or any other object or thing necessary or convenient to the development or sale of the Project. The Architectural and Design Guidelines for Heron Hills may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

a) Architectural Requirements. The following architectural requirements shall apply to all Dwellings constructed at Heron Hills except lots 909, 910, 911 and 912:

1) Dwelling Sizes. The following above-ground minimum finished square footages shall apply to all Dwellings constructed on the Lots: i) One Story Dwellings for single family residential units shall have a minimum of 1,400 finished square feet above ground, which shall also include a minimum two car garage; ii) Two Story Dwellings for single family residential units shall have a minimum of 1,800 finished square feet above ground with minimum of 900 finished square feet on the main level, which shall also include a minimum two car garage.

2) Exterior Materials. No Dwelling shall be built with less than 100% of all the faces of the structure being constructed of brick, stone, composite siding, Hardi plank, or stucco. A minimum of thirty percent (30%) of the front elevation must be brick, stone or a combination thereof, and a minimum of a three foot veneer band on any side or rear viewable from a street must be brick, stone or a combination thereof. No vinyl siding on any exterior surface of the Dwelling shall be used. The use of metal soffit or fascia sections is encouraged. Wainscot is acceptable. Wood exteriors are not permitted.

3) Roof Design. All roof shall have a minimum pitch of 4:12. All roofing materials must be of architectural grade asphalt shingles (25 year asphalt shingles) or better (shake, etc.). Mansard, fake mansard, A-frame, gambrel, flat, curve-linear, and domed roof designs are prohibited. All roof metal such as flashing, vent stacks, gutters, and chimney caps shall be made of anodized aluminum or galvanized metal, finished or painted with a color that is consistent with the exterior colors of the Dwelling.

4) Home Variation. To maintain an aesthetically pleasing neighborhood, no home with the same elevation and color shall be constructed nearer than 2 Lots of the identical home on the same street or across the street.

5) Address. All homes must have address numbers that are well lit and can easily be seen from the street. Committee will determine standard style.

6) Driveways of Lots 201 and 204. The driveways for Lots 201 and 204 shall be constructed on the east side of each Lot.

b) Architectural Requirements for Lots 125-129. The architectural requirements shall apply to all Dwellings constructed at Heron Hills on Lots 125-129:

1) Dwelling Sizes. The following above-ground minimum finished square footages shall apply to all Dwellings constructed on the Lots: i) One Story Dwellings for single family residential units shall have a minimum of 1,900 finished square feet above ground, which shall also include a minimum three car garage; ii) Two Story Dwellings for single family residential units shall have a minimum of 1,600 finished square feet on the main floor and 650 square feet finished on the second story, which shall also include a minimum three car garage.

2) Exterior Materials, Roof Design, Home Variation, and Address. The requirements in Section 43a) shall apply also to Lots 125-129.

44. Architectural and Design Review. The following restrictions apply to architectural and design review:

a) New Construction. Until 100% of the Maximum Number of Residential Lots have been developed and conveyed to Class "A" Members, the Declarant, subject to the authority, rules and regulations of Heron Hills Homeowners Association Design Review Committee, shall have exclusive authority to administer and enforce architectural controls and to review and act upon all

applications for original construction within the Project. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Declarant may assign its rights hereunder in whole or in part, at any time, to an Architectural Review Committee ("ARC") for the Property.

b) Architectural Review Committee: Modifications. Prior to the sale of the first Lot to a Class "A" Member, the Management Committee shall establish the ARC, which shall consist of at least one Person. Members of the ARC shall be appointed and shall serve at the discretion of the Management Committee; provided, however, as long as the Declarant owns any of the Property, it shall be entitled to appoint one member of the ARC. The ARC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures or on or to Lots containing Dwelling Units (including, without limitation, the initial landscaping on a Lot), Common Area. Subject to the Declarant's rights, the ARC also may be assigned jurisdiction over original construction within the Project. As long as Declarant owns any property in the Project, the ARC shall notify the Declarant in writing of any action taken hereunder. During such time, the Declarant shall have the right in its sole and absolute discretion, to veto any action taken by the ARC; provided, the Declarant's right to veto must be exercised within 30 days of its receipt of notice of action taken by the ARC. The party submitting the Plans for approval shall not be notified of the ARC's approval or disapproval until after Declarant's right to veto has been exercised or has expired. The Management Committee, with the approval of the Declarant for so long as the Declarant owns any of the Property, may create and appoint such subcommittees of the ARC as deemed appropriate. Such subcommittees may be established to preside over particular areas of review (e.g., landscape plans) and shall be governed by such procedures as may be established by the ARC or the Management Committee. Any action of any subcommittee shall be subject to the review and approval of the ARC and the Declarant, for as long as the Declarant owns any of the Property. Notwithstanding the above, neither the ARC nor the Declarant shall be obligated to review all actions of any subcommittees and the failure to take action in any instance shall not be a waiver of the right of the ARC or the Declarant to act in the future. The Heron Hills Homeowners Association Design Review Committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Management Committee may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

45. Guidelines and Procedures. The Declarant shall prepare Design Guidelines for Heron Hills which shall apply to all construction activities within the Project. The Declarant shall have sole and full authority to supplement and amend the Design Guidelines for Heron Hills as long as it owns any of the Property. Thereafter, the ARC shall have the authority to supplement and amend the Design Guidelines for Heron Hills, with the consent of the Management Committee. The Design Guidelines for Heron Hills may contain general provisions applicable to all of the Project, as well as specific provisions which vary from one portion of the Project to another depending upon location, unique characteristics, intended use, the Master Plans, and any other applicable zoning ordinances. The Design Guidelines for Heron Hills are intended to provide guidance to Owners and Builders regarding matters of particular concern in considering applications hereunder. The Design Guidelines for Heron Hills shall not be the exclusive

basis for decisions of the Heron Hills Homeowners Association Design Review Committee and compliance with the Design Guidelines Heron Hills shall not guarantee approval of any application. Any amendments to the Design Guidelines for Heron Hills shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines. The Design Guidelines for Heron Hills may be amended to remove requirements previously imposed or otherwise to make the Design Guidelines for Heron Hills less restrictive. All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines for Heron Hills in effect at the time the plans for such improvements are submitted to and approved by The Heron Hills Homeowners Association Design Review Committee, unless The Heron Hills Homeowners Association Design Review Committee has granted a variance in writing. So long as The Heron Hills Homeowners Association Design Review Committee has acted in good faith, and subject to the rights of the Declarant, its findings and conclusions with respect to appropriateness of, applicability of, or compliance with the Design Guidelines for Heron Hills and this Declaration shall be final. The Association shall make the Design Guidelines for Heron Hills available to Owners and Builders who seek to engage in development or construction within the Project and all such Persons shall conduct their activities in accordance with such Design Guidelines for Heron Hills.

46. Submission of Plans and Specifications. The following restrictions apply to the submission of all Plans and Specifications:

- a) Prior to commencing any construction, an Owner shall submit an application for approval of the proposed work to the Heron Hills Homeowners Association Design Review Committee. Such application shall be in the form required by the Heron Hills Homeowners Association Design Review Committee and shall include such information as required under the Design Guidelines for Heron Hills, such as Plans showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefore, and other features of proposed construction, as applicable. The Design Guidelines for Heron Hills shall set forth the procedure and any additional information for submission of the Plans. Before the Owner may begin the proposed activity, the application must be approved by the Heron Hills Homeowners Association Design Review Committee.
- b) In reviewing each submission, the Heron Hills Homeowners Association Design Review Committee may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. The Heron Hills Homeowners Association Design Review Committee may require relocation of native plants within the construction site, the installation of an irrigation system for the landscaping, or the inclusion of natural plant life on the Lot as a condition of approval of any submission. Approval by the Heron Hills Homeowners Association Design Review Committee shall not constitute approval of or waiver of approvals or reviews required by the Declarant, or any other governmental agency or entity having jurisdiction over architectural or construction matters. The Heron Hills Homeowners Association Design Review Committee shall not require permits or other approvals by local government entities other than those issued by such entities in the usual course of business. The Heron Hills Homeowners Association Design Review

Committee shall, within the period specified in the Design Guidelines for Heron Hills, advise the party submitting the Plans, in writing, at an address specified by such party at the time of submission, of (1) the approval of Plans, or (2) the segments or features of the Plans which are deemed by the Heron Hills Homeowners Association Design Review Committee to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines for Heron Hills, the reasons for such finding, and suggestions, if appropriate, for the curing of such objections. In the event the Heron Hills Homeowners Association Design Review Committee fails to advise the submitting party by written notice within the period specified in the Design Guidelines for Heron Hills of either the approval or disapproval and suggestions for curing the objections of the committee of the Plans, approval shall be deemed to have been given. Notice (for purposes of this Section only) shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prep aid, is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

c) The Heron Hills Homeowners Association Design Review Committee, as part of the Plan approval, may require that construction in accordance with approved Plans be commenced within a specified time period. In such event, if construction does not commence in a timely manner, then such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Heron Hills Homeowners Association Design Review Committee for reconsideration. If construction is not completed on a project for which Plans have been approved within the period, if any, set forth in the Design Guidelines for Heron Hills or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Declaration.

47. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Heron Hills Homeowners Association Design Review Committee will change from time to time and that interpretation, application and enforcement of the Design Guidelines for Heron Hills may vary accordingly. Approval of proposals, Plans and Specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, Plans and Specifications, drawings, or other matters subsequently or additionally submitted for approval.

48. Variance. The Heron Hills Homeowners Association Design Review Committee may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining Project. Inability to obtain, or the terms of; any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the ARC may not authorize variances without the written consent of the Declarant, as long as it owns any of the Property or has a right to annex any Additional Property.

49. Limitation of Liability. Review and approval of any application pursuant to this section is made on the basis of aesthetic considerations only and neither the Declarant, the Association, its officers, the Management Committee, the ARC, the Association's management agent, or any member of

the foregoing, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, its officers, the board, the ARC, the Association's management agent, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the ARC and its members shall be defended and indemnified by the Association as provided in the By-Laws.

50. Enforcement of Architectural and Design Guidelines and Restrictions. Any construction, alteration or other work done in violation of this Section or the Design Guidelines for Heron Hills shall be deemed to be nonconforming. Upon written request from the Association, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the Association or restore the property, Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed all costs, together with the interest at the rate established by the Management Committee (not to exceed the maximum rate then allowed by law), may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration. All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline set forth in the approval, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment unless otherwise prohibited in this Declaration. All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Section and the Design Guidelines for Heron Hills may be excluded from the Project, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Declarant, the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph. The Association shall be primarily responsible for enforcement of this Section. If however, in the discretion of the Declarant, the Association fails to take appropriate enforcement action, as authorized herein, within a reasonable time period, the Declarant, for so long as it owns any of the Property, may, but shall not be obligated to, exercise enforcement rights in the same manner as set forth above. In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and the decisions of the Heron Hills Homeowners Association Design Review Committee.

51. Basic Building Restrictions The following basic building restrictions shall be binding upon the construction of Improvement in or on the Property:

- a) Use of Property. Each Lot shall be used solely for residential/ agricultural purposes.
- b) The Heron Hills Homeowners Association Design Review Committee Approval. The Plans

and Specifications, including the location of all improvements must be approved in writing by the Heron Hills Homeowners Association Design Review Committee prior to commencement of any construction in accordance with and subject to this Declaration.

- c) Property Line Setbacks. Any structures to be constructed on a Lot shall comply with the minimum property line setbacks as set forth in Saratoga Springs City, Utah, Ordinances.
- d) Height. No Building shall exceed the height restrictions imposed by Saratoga Springs City, Utah and in no event shall a building exceed 55 feet in height measured from the highest natural ground level adjacent to such Building to the highest point of the ridge line of such Building in accordance with the Design Guidelines for Heron Hills.
- e) Foundations. A maximum of 18 inches of exposed concrete foundation shall be permitted. A maximum of 48 inches of exposed concrete shall be permitted on elevations where the grade slopes along the Dwelling Unit. Concrete Masonry Units (CMU) used for foundation purposes shall be painted to match the main dwelling. The Requirements are specifically addressed in the Design Guidelines for Heron Hills.
- f) Windows. A minimum of one window on each elevation of a Dwelling Unit shall be required. Metal windows are prohibited. The specific criteria for windows are set forth in the Design Guidelines for Heron Hills.
- g) Decks. Decks shall be integrated with the architecture of the main Dwelling Unit. Covered deck roof forms shall be consistent with the slope of the main roof on the Dwelling Unit. Deck supporting posts shall be 8 inches or greater. Exposed wood deck elements shall be painted or stained within sixty (60) days of final occupancy. Additional information is set forth in the Design Guidelines for Heron Hills.
- h) Mail Box. Declarant shall designate an area for the location of Mail Boxes which shall not be modified without approval of the Management Committee.

52. Utilities. Each Lot Owner shall be and is hereby made subject to all easements that now or in the future may be used for gas, electric, telephone, cable television, cable for computers, water, sewer, and other lines present or in the future, as are necessary to provide utility services to said Lot, adjoining Lots, and the Improvements thereon. Each Owner by accepting a deed or other document of conveyance agrees to execute such further grant(s) or other instruments as may be required by any utility or other company or publish governmental or quasi-governmental entity for such purposes. Subsequent to the date of the execution of this Declaration, any necessary electrical, telephone, gas, water, sewer, cable television, cable for computers, and other utility conduits, lines and pipes on any Lot shall be placed underground. No transformer, or electric, power, gas, water or other meter or device of any type, or any other apparatus shall be located on any pole within the Property. All utility installations must be approved by the Heron Hills Homeowners Association Design Review Committee or its designee in writing in advance. Each Owner shall abide by all applicable rules and regulations of all utility and other companies, governmental entities or quasi-governmental entities, who supply or provide utilities or related services to the Property.

53. Landscaping and Drainage. The following restrictions apply to all landscaping and drainage in the

Property:

a) Approval. Prior to commencement of any construction of any landscaping, fence, screening wall, retaining wall, arbor, gazebo, patio cover, roof or green space (i.e., lawns, ground cover or flowers), and prior to any planting of trees, bushes or shrubs, the prior written approval of the Heron Hills Homeowners Association Design Review Committee must be obtained.

b) Completion of Landscaping. Upon completion of construction of a Dwelling Unit on any Lot, or occupancy, whichever occurs last, between March 1 and September 1 of any calendar year, or within 180 days after completion of such construction, or occupancy, whichever occurs last, at any other time of the year, if occupancy occurs during a period when landscaping cannot be installed the builder/owner will have to escrow with Heron Hills or a title or escrow company approved by the Heron Hills in writing, the estimated cost of the landscaping. All front yard areas shall be landscaped in accordance with plans approved by the Heron Hills Homeowners Association Design Review Committee and thereafter carefully maintained. All Lots shall be kept free from plants infected with noxious insects or plant diseases which in the opinion of the Heron Hills Homeowners Association Design Review Committee are likely to spread to other property, and all Lots shall be kept free of weeds.

c) Front Yard Landscaping. The front yard of a lot is defined as the area of the Lot beginning at the front property line on any adjacent public street to a distance at least to the rear most part of the residence from the public street. This area is to be planted or sodded or maintained in a natural and native material or setting as approved by the Heron Hills Homeowners Association Design Review Committee. This area is to be irrigated as necessary, cut and or maintained to reflect a weed-free attractive appearance. Each residence shall be surrounded by irrigated green space. The Lot Owner is also responsible to sod the park strip area, if any, with a type of sod to be determined by the Declarant, on his Lot (including an irrigation system). The park strip trees, if any, will be provided and planted by the Declarant. At time of occupancy, the Lot Owner shall be responsible to water park strip trees, if any. Front lawns shall have minimum turf coverage of 50 percent. Greater percentages of turf coverage are permitted if drought tolerant turf grasses are used. All turf areas shall be permanently irrigated with an automatic irrigation system. Planting beds shall be 50 percent covered by plant material at the time of installation. After 3 years, plants shall cover 75 percent of the planting beds. Seasonal flowers shall qualify as cover. Natural earth tone stone materials, such as washed river rock, may be used.

e) Fencing. All fencing must be consistent with the Design Guidelines for Heron Hills and approved by the Heron Hills Homeowners Association Design Review Committee in writing. No Lot Owner shall remove, add to, alter, stain or paint the front fencing without consent of the Heron Hills Homeowners Association Design Review Committee. Side and rear fencing may be installed by the Lot Owner. No fencing may be installed by the Lot Owner in the front yard, (or the side yard adjacent to a public street on a corner lot), of a Dwelling Unit, except that it may extend toward the side property lines only as far forward as the front corners of said Dwelling.

f) Maintenance of Unimproved Lot. Each Lot Owner is responsible from the date of receipt of deed to his Lot to maintain that unimproved Lot free and clear of weeds, trash and debris. Each unimproved Lot shall be mowed at least twice per year or as many additional times as may be

necessary to maintain growth below 12 inches in height, except in the case of natural sage brush, trees and agricultural crops which shall be harvested timely.

g) Drainage. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading except after first obtaining the prior written approval of the Heron Hills Homeowners Association Design Review Committee. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from Buildings and so as to protect foundations and footings from excess moisture. Any drainage flows directed to adjacent Lots should not exceed historic flows. Owners shall not impede or retain water flow in any of the natural drainage gulches.

54. Approval of Improvements and Structural Alterations by The Heron Hills Homeowners Association. Regarding Improvements to the Property and subsequent structural alterations thereon:

a) Approval Required. No improvement, building, fence, wall or other structure shall be commenced, erected, repaired, altered, added to or maintained until the Plans and Specifications showing the nature, kind, shape, height, materials, floor plans, exterior color scheme and location of such structure, and the grading plans and finished grade elevations of the Lot to be built upon have been submitted to and approved by the Heron Hills Homeowners Association Design Review Committee hereinafter described and a copy thereof, provided by the owner as finally approved, lodged permanently with said Committee pursuant to the provisions of this Section. No landscaping on any Lot shall be done until a landscaping plan shall have been submitted to and approved by such Committee. Such Committee shall have the right to refuse to approve any such Plans or Specifications, or grading or landscaping plans which are not suitable or desirable in the Committees opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications, grading and landscaping plans, the Committee shall have the right to take into consideration the suitability of the proposed building or other improvement and of the materials of which it is to be built, to the Lot upon which it proposes to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the building or other improvements as planned on the outlook from the adjacent or neighboring Lots. All subsequent additions to or changes or alterations in any building, fence, or other improvement, including exterior color scheme and all subsequent additions to or changes or alterations in any grading or landscaping plans shall be subject to the prior approval of The Heron Hills Homeowners Association Design Review Committee.

b) Members of Committee. The Heron Hills Homeowners Association Design Review Committee shall consist of not less than one (1) members, no more than three (3) members. The following persons are hereby designated as the initial members of the Committee:

Stephen A. Larsen

Each member of the Committee shall hold office until such time as he has resigned or has been removed or his successor has been appointed as provided herein.

c) Appointment of Members. The Management Committee of Heron Hills shall have the right to appoint and remove all members of The Heron Hills Homeowners Association Design Review

Committee, except that during the period of Declarant's control, the Declarant may appoint 3 members of the Committee.

d) Review of Proposed Construction. Whenever in this Declaration the approval of The Heron Hills Homeowners Association Design Review Committee is required, it shall have the right to consider all of the Plans and Specifications for the improvement or proposal in question and all other facts, which in its sole discretion are relevant. Prior to commencement of any construction of any improvement on any Lot, the Plans and Specifications shall be submitted to The Heron Hills Homeowners Association Design Review Committee at the location specified by the ARC, and construction thereof may not commence unless and until the Committee has approved such Plans and Specifications in writing. The Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration or as from time to time shall be assigned to it by the Association, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Committee. The Committee shall approve Plans and Specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated, will not be detrimental to the surrounding area or Lots as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures. The Committee may condition its approval of Plans and Specifications or on other information prior to approving or disapproving the material submitted. The Committee may also issue rules or guidelines regarding anything relevant to its function, including but not limited to minimum standards and procedures for the submission of Plans and Specifications for approval. The Committee may require a one-hundred-fifty dollar (\$150.00) fee to accompany each application for approval. The Committee may require such detail in Plans and Specifications submitted for its review and such other information, as it deems proper. Until receipt by the Committee of all required Plans and Specifications and other information, the Committee may postpone review of anything submitted for approval. All improvements must comply with the zoning codes, ordinances and architectural design guidelines of the Saratoga Springs City. In the case of conflict between the design standards of the Heron Hills and the decisions of the Committee or the provisions of this instrument, the design standards of the Town shall prevail.

e) Committee Meetings. The Heron Hills Homeowners Association Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution, unanimously adopted in writing, designate one of its members to take any action or perform any duties for and on behalf of the Committee. In the absence of such designation, the vote of a majority of all of the members of the Committee, or the written consent of a majority of all of the members of the Committee taken without a meeting, shall constitute an act of the Committee.

f) Waiver of Consent. The approval or consent of the Alpine Canyon Brook Homeowners Association Design Review Committee to any Plans or Specifications for any work done or proposed, or in connection with any other matter requiring the approval or consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans or Specifications or other matter whatever subsequently or additionally submitted for approval or consent by the same or a different person.

g) Compensation. The members of the Heron Hills Homeowners Association Design Review Committee shall be entitled to reasonable compensation from the Association for services rendered, together with reimbursement for expenses incurred by them in the performance of their duties hereunder.

h) Completed Work. Inspection of completed work and correction of defects therein shall proceed as follows:

(1) Upon the completion of any improvement for which approved Plans and Specifications are required under this Declaration, the Owner shall give written notice of completion to the Committee.

(2) Within such reasonable time as the Committee may set but not to exceed fifth (15) days thereafter, the Committee or its duly authorized representative may inspect such improvement. If the Committee finds that such work was not done in strict compliance with all approved Plans and Specifications submitted, or required to be submitted for its prior approval, it shall notify the Owner in writing of such noncompliance within such period, specifying in reasonable detail the particulars of noncompliance, and shall require the Owner to remedy the same.

(3) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance; the Committee shall notify the Management Committee in writing of such failure. Upon Notice and Hearing, the Management Committee shall determine whether there is a noncompliance and if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Management Committee ruling. If the Owner does not comply with the Management Committees ruling within such period, the Management Committee at is option, may either remove the non-complying improvement or remedy the noncompliance, and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Management Committee shall levy an assessment against such Owner, the Improvement in questions and the Lot upon which the same is situated for reimbursement, and the same shall constitute a lien upon such land and improvement and be enforced as provided in this Declaration.

(4) If for any reason after receipt of said written notice of completion from the Owner the Committee fails to notify the Owner of any noncompliance within the period provided above, the improvement shall be deemed to be in accordance with said approved Plans and Specifications. Work in Progress. The Committee may inspect all work in progress and give notice of noncompliance as provided above. If the Owner denies that such noncompliance exists, the procedure set out above shall be followed, except that no further work shall be done, pending resolution of the dispute, which would hamper correction of the noncompliance if the Management Committee shall find that such noncompliance exists.

j) Non-Liability of Committee Members. Neither the Committee nor any member thereof nor the Management Committee nor any member thereof shall be liable to the Association or to any owner or to any other person for any loss, damage, or injury arising out or in any way connected with the performance of the Committee's or the Management Committee's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Committee or its Members or the Management Committee or its members, as the case may be. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes, materials and similar features, but shall not be responsible for reviewing, nor shall its approval or any Plans and Specifications be deemed approved thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

55. Insurance. The Management Committee shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, insurance on the Common Area if deemed necessary by the Management Committee, satisfying at least the following requirements:

a) Property Insurance. Blanket property insurance using the standard "Special" or "All-Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this subsection, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard P. U. D. casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgment and in its sole discretion.

b) Liability Insurance. Liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated first class subdivisions in the county. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.

c) Director's and Officer's Insurance. Adequate director's and officer's liability insurance (aka Errors and omissions insurance).

d) Fidelity Bond. At the discretion of the Management Committee, a separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated officers as well as all employees for theft of Association funds.

e) Agents. Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

f) Amount of Coverage. The total amount of fidelity bond coverage, if any is required by the Management Committee, shall be based upon the Committee's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all Lots, plus reserve funds.

g) Quality of Coverage. The bonds required shall meet the following additional requirements:

- 1) they shall name the Committee, the Owners Association, and the Property Manager as obligee;
- 2) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense;
- 3) the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and
- 4) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, and FNMA.

h) Earthquake Insurance shall not be required unless requested by a least seventy five percent (75%) of the Members of the Association.

i) Quality of Carrier. A "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports -- International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurers Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service -- if the carrier is issuing a master policy or an insurance policy for the common elements in the Project.

j) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Lot Owners of Heron Hills for the use and benefit of the individual Owners."

k) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

l) Beneficiary. In any policy covering the entire Project, each Owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided ownership interest in the Common Area and Facilities.

m) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

n) Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

o) Sundry Provisions. Each insurance policy shall contain at least the following additional miscellaneous items:

1) Waiver of Subrogation. A waiver of the right of a subrogation against Owners individually;

2) Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual Owner; and

p) Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the Association.

q) Individual Insurance. Each Owner and resident shall purchase and maintain adequate liability and property insurance on his Lot, Dwelling Unit, personal property and contents; provided, however, no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the Property at any particular time.

r) Primary Coverage. The insurance coverage of an Owner shall, in the event the Association also has insurance covering the loss, be primary and the insurance of the Association shall be secondary.

s) Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

t) Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Lot, and may be enforced by them.

u) Special Endorsements. Each policy shall also contain or provide those endorsements purchased by other Associations in similarly situated first class subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and, or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed

Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction.

v) Restrictions on Policies. No insurance policy shall be maintained where:

- 1) Individual Assessments Prohibited. Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA.
- 2) Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or
- 3) Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

56. Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

57. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

a) Definitions. Each of the following terms shall have the meaning indicated:

- 1) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.
- 2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.
- 3) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.
- 4) "Partial Condemnation" shall mean any other such taken by eminent domain or grant

or conveyance in lieu thereof.

5) "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

6) "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

7) "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

8) "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

9) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

b) Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

c) Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Project's undivided ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Lots which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Area areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

d) Notices of Destruction or Obsolescence. Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the

destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

e) Excess Insurance. If the insurance proceeds condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, then the excess funds shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This covenant is also for the benefit of the Association and any Mortgagee, and, therefore, may also be enforced by them. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

f) Inadequate Insurance. In the event the cost of Restoration exceeds Available Funds, all of the Lots shall be assessed for the deficiency on the basis of their respective percentages of interest in the Association.

g) Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Lots will not be the subject of Restoration (even though the Project will continue) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided ownership interest in the Common Area areas and Facilities shall be immediately reallocated to the remaining Lots.

h) Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Plat Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Area areas. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

i) Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Area areas and Facilities.

j) Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

k) Restoration Power. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Lot therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

l) Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

58. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such proposed act or transaction from Owners who collectively hold the required percentages, subject to the following conditions:

a) Ninety-Day Limit. All necessary consents must be obtained prior to the expiration of ninety (90) days from the time the first written consent is obtained; and

b) Change In Ownership. Any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

59. Mortgagee Protection. The lien or claim against a Lot for unpaid Assessments levied by the Management Committee or by the Association pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid amounts shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available there under shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot the lien of any Assessments becoming due thereafter.

b) Books and Records Available for Inspection. The Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, By-Laws, Articles of Incorporation, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and the Association. The term "Available", as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Management Committee or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause upon at least thirty (30) days prior written notice to the other

party thereto.

e) Eligible Mortgagee Designation. Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

1) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

2) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

3) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Committee or the Association.

4) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

f) No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or similar restriction.

60. Amendment. This Declaration may be amended as follows:

a) Consent of the Owners. The affirmative vote of at least Sixty seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration or the Plat Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained; and

b) Consent of Eligible Mortgagee. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one percent (51%) of the undivided ownership interest in the Common Area shall be required to add to or amend any material provision of this Declaration or the Plat Map which establishes, provides for, governs, or regulates any of the following: (1) voting rights; (2) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens; (3) reductions in reserves for maintenance, repair, and replacement of the Common elements; (4) insurance or fidelity bonds; (5) limitations and restrictions on the right to use of the

Common Area areas; (6) responsibility for maintenance and repairs; (7) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (8) the boundaries of any Lot; (9) convertibility of a Lot into Common Area; (10) the imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot; (12) express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and (13) the requirement that the Project be professionally managed rather than self managed. Any addition or amendment shall not be considered material for purposes of this Paragraph b) if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map or the termination of the legal status of the Project, if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence. Anything to the contrary notwithstanding, if any financing or the guaranty of any financing on a Lot or Dwelling Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Veterans Administration (VA), no material amendment, as defined above, to the Declaration, or merger, may become effective, as to said Agencies, without their prior express written consent.

61. Notice and Hearing. In the event a claim is made that a Lot Owner or resident has violated the Project Documents, the Owner or resident shall be entitled to the following:

a) Notice in Writing. Written notice specifying the nature of the violation (and providing any other appropriate information);

b) Hearing. The foregoing Notice shall also state the time, date and place when the Owner or resident will have an opportunity to be heard by the Management Committee.

c) Schedule and Manner of Providing Notice. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the member at the address given by the member to the Management Committee for the purpose of service of notice or to the address of the member's Lot if no other address has been provided. Any address may be changed from time to time by giving written notice to the Management Committee.

d) Costs & Assessments. If the violation, or the failure to correct or remedy a violation, results or may result in the expenditure of funds, the notice shall also state that the Management Committee may vote to assess the adverse party, levy a fine, or impose other sanctions if the Committee finds

that a violation has occurred.

e) Final Determination. After the hearing has taken place, the Management Committee shall (1) determine whether a violation has occurred and, if so, may impose a fine or issue sanctions which shall become effective not less than five (5) days after the date of the hearing; or (2) take such other action as may be appropriate. The determination of the Management Committee shall be final. However, nothing herein shall be construed to prevent the Management Committee from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing Notice and Hearing.

62. Declarant's Sales Program. Notwithstanding anything to the contrary, until Declarant has sold all the Lots owned by it in the Project or the expiration of a reasonable sales period following ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder, whichever first occurs (hereinafter referred to as the "Occurrence"), neither the Owners, the Association nor the Committee shall interfere with the completion of improvements and sale of all remaining Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

a) Sales Office and Model Lots. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Lots, homes or Units at any one time. Such office and/or models may be one or more of the Lots owned by it, or one or more of any separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

c) Common Area Use. Declarant shall have the right to use the Common Area areas of the Project to facilitate sales.

d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the occurrence, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

63. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.

65. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select members of the Committee, and to transfer management of the Project to the Association. If and when Declarant elects to do so, Declarant shall send written notification to each Owner of the effective date of the transfer (the "Transfer or Transition Date") at least Forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the members of their own Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Expenses of the Committee incurred prior to the Transfer Date to be paid in full on or before such date.

66. Certain Provisions Applicable to Declarant. Notwithstanding any other provision herein contained, for so long as Declarant continues to own any of the Lots the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Declaration.

a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Lot, and no person shall rely upon any warranty or representation not so specifically made therein.

b) No amendment may be made to the Declaration without the written consent of Declarant so long as Declarant retains the ownership of five (5) or more Lots within the Project.

67. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

68. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or resident of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

69. Enforcement and Right to Recover Attorney's Assessments. The Association, Management Committee, or any aggrieved Lot Owner may take action, at law or in equity, to recover damages, obtain injunctive relief, or enforce the terms, covenants or conditions of the Project Documents. Should the Association, Management Committee or a Lot Owner be required to take action to enforce the Project

Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorney's fee, which may arise or accrue.

70. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. However, neither the Association nor the Committee shall in any way be considered insurers or guarantors of security within the Project. Neither the Association nor the Management Committee shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and residents, their guests and invitees, as applicable, acknowledge that neither the Association nor the Committee represent or warrant that any security measures undertaken will insure their safety. All Owners and residents, their guests and invitees, acknowledge and understand that the Association and Committee are not insurers of their safety and they hereby assume all risks for loss or damage to their person or property and further acknowledge that the Association and Committee have made no representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Project.

71. Agent for Service of Process. After the occurrence of the Event, the President of the Association shall be the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent shall be Stephen A. Larsen. The Registered Office of the Registered Agent is 935 West Center, Lindon, Utah, 84042.

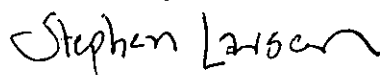
72. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

73. Duration. These restrictive covenants shall run with the land and shall be binding upon the owners thereof, their heirs, successors and assigns until December 31, 2045, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

EXECUTED the day and year first above written.

DECLARANT:

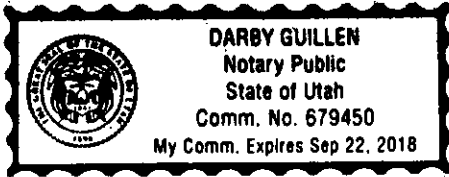
 Member
Old Towne Square LLC



STATE OF UTAH)
)ss.
COUNTY OF UTAH)

On the 4 day of November, 2015, personally appeared before me Stephen Larsen the

signer of the above instrument, whose identity is known or was satisfactorily proven to me, who duly acknowledged that he executed the same.



Darby Guillen

Notary Public
Residing at: *Highland, UT.*

[Handwritten flourish]

EXHIBIT "A"
LEGAL DESCRIPTION

The Land comprising the Project described in the foregoing Declaration is located in Utah County, Utah and is described more particularly as follows:

**HERON HILLS
OVERALL BOUNDARY DESCRIPTION**

A PARCEL OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 7 AND THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WITH IS THE SOUTHWEST CORNER OF SECTION 7, TOWNSHIP 6 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN. THENCE NORTH 166.00 FEET; THENCE N 89°59'26" E 696.88 FEET; THENCE S 00°00'34" E 403.13 FEET; THENCE S 89°45'08" E 1093.38 FEET; THENCE N 15°57'52" W 8.37 FEET; THENCE N 89°59'26" E 114.53 FEET TO A POINT ALONG THE COMPROMISE LINE OF UTAH LAKE; THENCE ALONG SAID LINE THE FOLLOWING FOUR (4) COURSES: (1) S 03°22'36" W 635.47 FEET, (2) S 03°22'23" W 212.49 FEET, (3) S 17°57'17" E 234.26 FEET, AND (4) SOUTH 19.64 FEET TO A POINT ALONG THE NORTH BOUNDARY LINE OF LAKE MOUNTAIN ESTATES PLATS "B" & "D", THENCE ALONG SAID BOUNDARY N 89°43'23" W 1931.19 FEET TO POINT ALONG THE EASTERN BOUNDARY LINE OF THE VILLAGE OF HAWKS RANCH PLAT 2; THENCE ALONG SAID BOUNDARY N 00°16'35" E 1313.36 FEET TO THE POINT OF BEGINNING.

CONTAINS: 53.16 ACRES

OF LOTS: 129

BASIS OF BEARING: SECTION LINE BETWEEN THE NORTHWEST CORNER AND THE WEST QUARTER CORNER OF SECTION 18 T6S, R1E, SLB&M BEARING S00°16'35" W 2627.67 FEET.

EXHIBIT "B"

<u>Lot No.</u>	<u>Fractional Interest</u>	<u>Percentage of Ownership Interest</u>
1	.7751	1/129
2	.7751	1/129
3	.7751	1/129
4	.7751	1/129
5	.7751	1/129
6	.7751	1/129
7	.7751	1/129
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125	.7751	1/129
126	.7751	1/129
127	.7751	1/129
128	.7751	1/129
129	.7751	1/129

TOTAL: 100.00%

EXHIBIT "C"
LEGAL DESCRIPTION OF COMMON AREA

Heron Hills Plat "A"
Parcel A
Parcel B