

Springville City
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Springville, Ut
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RECORDED AT THE REQUEST OF:
BROOKLINE PROPERTIES, L.C.
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ENT 143120;2006 PG 1 of 30
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2006 Oct 26 1:39 pm FEE 101.00 BY VM
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DECLARATION OF CONDOMINIUM

(Including Bylaws)

OF

BROOKLINE CONDOMINIUMS

[Expandable Condominium Project]

Springville, Utah

THIS DECLARATION OF CONDOMINIUM is made as of this 25th day of October, 2006, by Brookline Properties, L.C., a Utah limited liability company ("Declarant"), pursuant to the provisions of Sections 57-8-1 et seq. of the Utah Code (1953), as amended, known as the Condominium Ownership Act (the "Act").

RECITAL

- A. Declarant is the record owner of that certain Tract of land, more particularly described in Article II hereof.
- B. Declarant is in the process of constructing, upon said Tract the Condominium Project, including certain Units and other improvements in accordance with the plans, and drawings reflected in the Record of Survey Map.
- C. Declarant desires, by filing this Declaration and the Record of Survey Map, to submit said Tract and all improvements constructed thereon to the provisions of the Act as an expandable condominium project to be known as BROOKLINE CONDOMINIUMS.
- D. Declarant intends to sell fee title to the individual Units contained in the Project, together with an undivided percentage interest in and to the Common Areas and Facilities appurtenant to such Units, subject to the covenants, conditions, restrictions, limitations, and easements herein set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby declares as follows:

Article I DEFINITIONS

When used in this Declaration (including that portion hereof captioned "Recitals") each of the following terms used shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act.

1.1 **Act** shall mean and refer to the Condominium Ownership Act, Title 57, Chapter 8, Utah Code (1953), as the same may be amended time to time, including any successor statutory provisions thereof.

1.2 **Additional Land** shall mean and refer to that real property, together with all improvements constructed thereon, situated in the City of Springville, County and State of Utah, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference. A description of the Additional Land is set forth in this Declaration solely for purposes of identification and this Declaration is not deemed to constitute a lien, encumbrance or restriction upon all or any portion of the Additional Land unless and until the same is added to the Project in accordance with law and the provisions of Article II hereof.

1.3 **Association of Unit Owners or Association** shall mean and refer to the Unit Owners acting as a group in accordance with this Declaration and the Act.

1.4 **Building** shall mean and refer to a structure containing Units and comprising a part of the Project.

1.5 **Bylaws** shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration (as authorized by the Act) in Articles X, X and XII.

1.6 **Common Areas or Common Areas and Facilities** shall mean, refer to and include:

(a) The real property and interests in real property which this Declaration submits to the provisions of the Act, including the entirety of the Tract and all landscaping, sidewalks, walkways, stairways and landings, balconies, recreation and/or play areas, fencing, parking areas, private drives or roadways, entry statements and gates, and exterior Building surfaces, including roofs, but excluding all Condominium Units as herein defined;

(b) Those Common Areas and Facilities and Limited Common Areas and Facilities specifically set forth and designated as such on the Map;

(c) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management, including any central services such as power, water, gas, light, television reception and internet services; and

(d) All Common Areas and Facilities and all Limited Common Areas and Facilities as defined in the Act, whether or not expressly listed herein or on the Map.

1.7 **Common Expenses** shall mean and refer to all items, things and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration and such rules, regulations and other determinations and agreements pertaining to the Condominium Project as the Management Committee or the Association may from time to time adopt.

1.8 **Condominium Project or Project** shall mean and refer to BROOKLINE CONDOMINIUMS as the same shall exist from time to time.

1.9 **Condominium Unit** or **Unit** shall mean and refer to one of the residential living units in the Project intended for independent use as defined in the Act, together with the undivided interest in and to the Common Areas and Facilities appertaining to that Unit, and shall include anything located within or without said Unit but designated and designed to serve only that Unit, such as a detached garage, built-ins, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, but specifically excluding the exterior walls and surfaces of Buildings and Units, interior common or party walls, floor joists, foundations and roofs. Fixtures and the like shall also be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim consisting of, among other things and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installation constituting part of a particular Unit or serving only that Unit, and any structural members of any other property of any kind, including fixtures and appliances within any Unit which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the Building within which the Unit is situated, shall be considered part of the Unit.

1.10 **Declarant** shall mean and refer to BROOKLINE PROPERTIES, L.C., a Utah limited liability company, or its successors and assigns as developer of the Project.

1.11 **Declaration** shall mean and refer to this Declaration (including Bylaws) as the same may hereafter be supplemented or amended in accordance with law and the provisions hereof. Any ambiguities, omissions, and/or conflicts herein shall be construed to comply with the provisions of the Act.

1.12 **Limited Common Areas and Facilities** or **Limited Common Areas** shall mean and refer to those Common Areas designated in this Declaration or the Act or shown on the Map as reserved for the exclusive use of a certain Unit or Units to the exclusion of other Units.

1.13 **Management Committee** or **Committee** shall mean and refer to the Committee as provided in this Declaration charged with and having the responsibility and authority to administer the Project and to make and to enforce reasonable rules and regulations covering the operation and maintenance thereof.

1.14 **Member** shall mean and refer to an Owner as a member of the Association.

1.15 **Mortgage** shall mean and include either a recorded first mortgage or a recorded first deed of trust by which a Condominium Unit is encumbered.

1.16 **Mortgagee** shall mean and include any person named as a mortgagee or as a beneficiary, as the case may be, under a Mortgage as defined in Section 1.15, above.

1.17 **Record of Survey Map, Survey Map** or **Map** shall mean and refer to the Record of Survey Map filed concurrently herewith with the Utah County Recorder entitled Brookline Condominiums, an Expandable Condominium Project, Phases 5 and 6, Springville City, Utah County, Utah, executed and acknowledged by Declarant, consisting of six (6) sheets prepared by Kenneth E. Barney, a duly registered Utah Land

Surveyor holding Certificate No. 172762, as said Map may hereafter be modified, supplemented, or amended in accordance with law and the provisions hereof.

1.18 **Tract or Entire Tract** shall mean and refer to the real property described in Section 2.1 which Article II of this Declaration submits to the Act, together with all appurtenances thereto and any other property added into the Project as provided in this Declaration.

1.19 **Unit Number** shall mean and refer to the number, letter or combination thereof which designates a Unit on the Map.

1.20 **Unit Owner or Owner** shall mean and refer to the person or persons owning the fee simple interest to a Condominium Unit. The Declarant shall be deemed to be the Owner of all completed but unsold Units. In the event a Unit is the subject of an executory contract of sale, the buyer shall, unless the seller and the buyer have otherwise agreed and have informed the Committee in writing of such agreement, be considered the Unit Owner for all purposes.

Article II

SUBMISSION OF THE PROJECT AND EXPANSION

2.1 **Submission, Description, and Reservations.** Declarant hereby submits to the provisions of the Act the following described real property situated in the City of Springville, Utah County, Utah:

PHASE 5

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 36, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN; THENCE S.88°44'34"W. ALONG THE SECTION LINE 51.67 FEET; THENCE NORTH 552.49 FEET TO THE REAL POINT OF BEGINNING,

THENCE NORTH A DISTANCE OF 165.78 FEET; THENCE EAST A DISTANCE OF 83.09 FEET; THENCE NORTH A DISTANCE OF 47.36 FEET; THENCE WEST A DISTANCE OF 19.43 FEET; THENCE NORTH A DISTANCE OF 87.31 FEET; THENCE S.89°29'54"E. A DISTANCE OF 134.39 FEET TO A POINT OF CURVATURE OF A TANGENT 36.75-FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY 57.40 FEET ALONG THE ARC OF THE SAID CURVE, HAVING A CENTRAL ANGLE OF 89°29'20" AND A CHORD THAT BEARS

S.44°44'57"E. 51.74 FEET TO THE CURVES END; THENCE SOUTH A DISTANCE OF 36.17 FEET TO A POINT OF CURVATURE OF A TANGENT 15.00-FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHEASTERLY 11.78 FEET ALONG THE ARC OF THE SAID CURVE, HAVING A CENTRAL ANGLE OF 44°59'56" AND A CHORD THAT BEARS S.22°29'58"E. 11.48 FEET TO THE CURVES END; THENCE S.44°58'44"E. A DISTANCE OF 5.76 FEET TO A POINT OF CURVATURE OF A TANGENT 15.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY 11.77 FEET ALONG THE ARC OF THE SAID CURVE, HAVING A CENTRAL ANGLE OF 44°57'32" AND A CHORD THAT BEARS S.22°28'46"E. 11.47 FEET TO THE CURVES END; THENCE SOUTH A DISTANCE OF 43.72 FEET TO A POINT OF CURVATURE OF A TANGENT 25.00-FOOT

RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 39.27 FEET ALONG THE ARC OF THE SAID CURVE, HAVING A CENTRAL ANGLE OF 90°00'00" AND CHORD THAT BEARS S.45°00'00"W. 35.36 FEET TO THE CURVES END; THENCE SOUTH A DISTANCE OF 28.00 FEET; THENCE EAST A DISTANCE OF 63.48 FEET; THENCE SOUTH A DISTANCE OF 56.44 FEET; THENCE N.89°59'51"E. A DISTANCE OF 21.90 FEET; THENCE SOUTH A DISTANCE OF 80.84 FEET; THENCE WEST A DISTANCE OF 142.52 FEET; THENCE NORTH A DISTANCE OF 32.91 FEET; THENCE WEST A DISTANCE OF 165.18 FEET MORE OR LESS TO THE POINT OF BEGINNING. CONTAINING 1.66 ACRES OF LAND.

PHASE 6

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 36, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN; THENCE S.88°44'34"W. ALONG THE SECTION LINE 51.67 FEET; THENCE NORTH 552.49 FEET TO THE REAL POINT OF BEGINNING,

THENCE S.90°00'00"W. A DISTANCE OF 156.00 FEET; THENCE N.00°00'00"W. A DISTANCE OF 165.78 FEET; THENCE N.90°00'00"E. A DISTANCE OF 63.71 FEET; THENCE N.00°00'00"E. A DISTANCE OF 136.04 FEET; THENCE S.89°29'54"E. A DISTANCE OF 155.96 FEET; THENCE S.00°00'00"W. A DISTANCE OF 87.31 FEET; THENCE N.90°00'00"E. A DISTANCE OF 19.43 FEET; THENCE S.00°00'00"W. A DISTANCE OF 47.36 FEET; THENCE S.90°00'00"W. A DISTANCE OF 83.09 FEET; THENCE S.00°00'00"W. A DISTANCE OF 165.78 FEET MORE OR LESS TO THE POINT OF BEGINNING. CONTAINING 1.10 ACRES OF LAND.

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.

RESERVING UNTO DECLARANT, however such easements and rights of ingress and egress over, across, through, and under the above-described Tract and any improvements (including Buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant: (i) to construct and complete each of the Buildings and all of the concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land or any portion thereof such improvements as Declarant shall determine to build in its sole discretion (and whether or not the Additional Land or any portion thereof has been or hereafter will be added to the Development); and (iii) to improve portions of the said property with such other or additional improvements, facilities or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described Tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated

in accordance with their terms, expire ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, any Mortgage (and nothing in this paragraph shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Map or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described Tract at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities; **AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS CONTAINED IN THIS DECLARATION.**

2.2 Division into Condominium Units, Minimum and Maximum Ownership Interests. The Project is hereby divided into thirty-two (32) Condominium Units as set forth on the Map, each such Condominium Unit consisting of a Unit and an appurtenant undivided but equal percentage interest in and to the Common Areas and Facilities. Such Units comprise the minimum number of Units in the Project and give each Owner a maximum ranging from 3.125% undivided interest in the Common Areas and Facilities. If all of the Additional Land is added into the Project pursuant Sections 2.3 and 2.4, the maximum number of Units in the Project will be two hundred sixty-four (264) and each Unit Owner will have a 0.379% undivided interest in the Common Areas and Facilities.

2.3 Expansion of Project. Declarant reserves the right at Declarant's option, exercisable without the consent of any Unit Owner, to expand the Project by adding to it, without limitation, all or any portion of the Additional Land, from time to time at Declarant's choosing, but within the seven (7) year period of limitation referred to in Section 2.4 (f), and without regard to any order of addition of such Additional Land. Declarant presently knows of no circumstance which will terminate Declarant's option to expand the Project prior to the expiration of such seven (7) year time limit. Declarant makes no assurances of expansion of the Project or to the location of any improvements to be constructed upon the Additional Land.

2.4 Limitation on Expansion. Declarant's right to annex the Additional Land into the Project shall be subject to the following limitations:

- (a) Any land added to the Project must be part or all of the Additional Land set forth and described in Exhibit A hereto;
- (b) The maximum number of Units that may be created on the Additional Land is one hundred and eighty four (184).
- (c) No expansion of the Project shall cause the total aggregate number of Units existing in the Project to exceed two hundred sixteen (216); provided that in any

event the maximum number of Units per acre within the Project shall be those allowed by the applicable zoning ordinances of Springville City.

(d) The holder of each mortgage, deed of trust or other security device affecting any part of the Additional Land being annexed into the Project must, through appropriate instruments recorded in Utah County, Utah, subordinate the encumbrance held by such holder to the Supplemental Declaration and to the Map to which such Supplemental Declaration relates;

(e) The Additional Land added to the Project must be subdivided into Condominium Units, Common Areas and Limited Common Areas designed to be used for purposes similar to those contemplated by this Declaration; provided, however, that in each succeeding phase of the Project, Buildings and Units shall be substantially identical to, and the architectural style, quality of construction and principal materials used within such phase shall be compatible and in harmony with, that of prior phases; and

(f) The right to expand the Project shall expire seven (7) years after this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

2.5 Expansion Procedure. Subject to compliance with the provisions of Section 2.4, the addition of any such land shall become effective upon the concurrent recordation in the office of the County Recorder of Utah County, Utah, of a Map of such Additional Land, or portion thereof, signed by the owner thereof, and of a Supplemental Declaration which (a) is signed by the then owner(s) of such Additional Land as Declarant; (b) describes the land to be added; (c) declares that the added land is to be held, transferred, sold, conveyed, and occupied subject to this Declaration; and (d) sets forth such additional limitations, restrictions, easements, covenants and conditions, not inconsistent with those of this Declaration, as are applicable to the added land, including any adjustments in the appurtenant undivided interests pertaining to new Condominium Units resulting from the addition of such Additional Land into the Project. When any such expansion becomes effective, the added land shall become part of the Tract and the Project and subject to the provisions of this Declaration and any amendment or supplement thereto.

2.6 No Obligation to Expand or Develop. Declarant has no obligation hereunder to add any Additional Land to the Project or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Tract, as defined on the date hereof, and land added thereto in accordance with the terms of this Article, shall be deemed to be subject to this Declaration, whether or not shown on any Map filed by Declarant or described or referred to in any documents executed or recorded by Declarant, including Exhibit A to this Declaration.

2.7 Other Annexation. Anything herein to the contrary notwithstanding, to the extent that Declarant does not now or in the future may not own all of the Additional Land, the then owners of such Additional Land or parts thereof ("Adjoining Owners") may add all or any part of the Additional Land to the Project and subject the same to the terms of this Declaration, provided that (a) the same limitations which are imposed on Declarant under Section 2.4 of this Article II shall be applicable to Adjoining Owners;

and (b) Adjoining Owners make the recordations and comply with all the other requirements of this Article II.

Article III

IMPROVEMENTS

3.1 Improvements. The improvements included in the Project are now or will be located on the Tract and all of such improvements are described on the Map, including the number of Units which are to be contained in the Buildings which comprise a part of such improvements, the dimensions of the Units, and other significant facts relating to such Buildings, Units and Common Areas and Facilities.

3.2 Description of Buildings and Units. Phases 5 and 6 of the Project each have two Buildings, each containing eight Units, four on each of two Building levels: ground (or main) and upper. Each Building level has two Units of two bedrooms and one bath, and two Units of one bedroom and one bath. Units on upper levels are accessed through a main level entry and interior stairs. Each Unit has a ground level single car garage and a ground level limited Common Area assigned parking place. The construction consists of siding over wood frame with wood and/or asphalt shingle roof. The Units range in size from 1,003 to 1,321 square feet and the configurations of the Units are as reflected on the Map.

3.3 Description and Legal Status of Units. The Map shows the Unit Number of each Unit, its location and dimensions from which its areas may be determined, the Limited Common Areas, if any, which are reserved for its use, and the Common Areas of the Project. Each Unit shall be legally designated and described by a Unit Number.

3.4 Common and Limited Common Areas. The Common and Limited Common Areas contained in the Project are defined in Article I hereof and described and identified on the Map. The Common Areas will consist of, but not be limited to, private streets and driveways, parking areas, sidewalks, recreation or play areas, a swimming pool, clubhouse and related facilities, fencing, and landscaped areas throughout the Project. Neither the ownership of undivided interests in and to the Common Areas nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which they appertain, and even though not specifically mentioned in the instrument of conveyance, such percentage of undivided interest and such right of exclusive use shall automatically accompany the conveyance of the Unit to which they relate.

3.5 Conveyance Description of a Unit. Each conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the Unit Number shown on the Map with the appropriate reference to the Map and to this Declaration, as each shall appear on the records of the County Recorder of Utah County, Utah, and in substantially the following form:

Unit contained within Phase __, BROOKLINE CONDOMINIUMS as the same is identified in the Record of Survey Map therefor recorded in Utah County, Utah as Entry No. _____ (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Condominium of Brookline Condominiums recorded in Utah County, Utah as Entry No. _____ (as said Declaration may have

heretofore been amended or supplemented), TOGETHER WITH the undivided ownership interest in and to the Common Areas and Facilities which is appurtenant to said Unit as more particularly described in said Declaration (as said Declaration may have heretofore been amended or supplemented).

Such description will be construed to describe the Unit, together with an undivided ownership interest in and to the Common Areas and Facilities as set forth herein and as the same are established and identified in the Declaration and on the Map, and to incorporate all the rights incident to ownership of a Unit and all the limitations of such ownership as described in this Declaration. Each such conveyance shall be subject to all of the provisions of this Declaration.

Article IV

NATURE AND INCIDENTS OF OWNERSHIP

4.1 Holding Title. Title to a Unit shall be in fee simple and may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common. An Owner's right to sell or otherwise convey title to such Owner's Unit shall not be subject to any right of first refusal or similar restrictions in favor of Declarant or the Association.

4.2 No Separation. No part of a Unit, nor any part of the legal rights comprising ownership of a Unit, may be separated from any other part thereof during the period of condominium ownership described herein, so that each Unit, the undivided interest in and to the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy the Limited Common Areas appurtenant to each Unit, shall always be conveyed, devised, encumbered, and otherwise effected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance or other disposition of a Unit or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration.

4.3 Membership in Association. Every Unit Owner shall be a Member of the Association of Unit Owners. Membership in the Association shall be mandatory, shall be appurtenant to, and shall not be separated from the Unit to which it appertains.

4.4 Undivided Interest in Common Areas. Each Unit Owner shall have, for each Unit owned, an equal, undivided ownership interest in and to the Common Areas as set forth in Section 2.2.

4.5 No Partition. The Common Areas and Facilities shall be owned in common by all the Owners of Units and no Unit Owner may bring action for partition thereof.

4.6 Use of Common Areas and Limited Common Areas. Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy the Limited Common Areas which appertain to his Unit as designated herein or on the Map or inferred by the Act.

4.7 Duty of Owner to Pay Taxes on Unit Owned. It is understood that under the Act each Unit (and its percentage of undivided interest in and to the Common Areas) in the Project is subject to separate assessment and taxation of each taxing authority or special district which has such jurisdiction over the Project for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the Project or the Association as such. Accordingly, each Unit Owner will pay and discharge any and all property taxes and assessments which may be assessed against such Owner relative to his Condominium Unit.

4.8 Duty to Pay Association Assessments. Each Unit Owner is obligated to pay and discharge all assessments and charges levied by the Association as set forth herein.

4.9 Unit Maintenance. Each Owner shall at his own cost and expense maintain, repair, paint, re-paint, tile, paper or otherwise finish and decorate the interior walls and trim the interior surfaces of the walls, ceilings, floors, and windows and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with his Unit.

4.10 Maintenance of Limited Common Areas. Each Owner shall keep the Limited Common Areas designed for use in connection with his Unit in a clean, sanitary and attractive condition at all times notwithstanding the duty and obligation of the Committee to maintain and repair Common and Limited Common Areas pursuant to the provisions of Article X.

Article V

EASEMENTS

5.1 Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same, shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either in the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Buildings on the Tract, by error in the Map, by settling, raising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

5.2 Access for Repair of Common Areas. If any of the Common Areas are or may be located within any of the Units or may be conveniently accessible only through the Units, the Owners of the other Units shall, have the irrevocable right, to be exercised by the Committee, as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible

therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or another Unit or Units. The Committee shall also have such rights independent of the agency relationship. Damage to the interior of any part of the Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Committee or of Unit Owners, shall be an expense of all the Unit Owners and assessed proportionately; provided, that if such damage is the result of negligence of the Owner of the Unit, members of his family, his or their guests or invitees, then such Owner shall be financially responsible for all such damage. Amounts owing by Owners pursuant hereto shall be collected by the Committee by assessment pursuant to this Declaration.

5.3 Management Committee. The Management Committee shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

5.4 Utility Services. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all public utilities, including but not limited to, water, sewer, gas, internet, telephone, electricity, and other utility services.

5.5 Right of Ingress, Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to any Limited Common Area designated for use in connection with his Unit, and each Owner shall have the right to the horizontal, vertical and lateral support of his and any adjoining Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

Article VI

RESTRICTIONS

6.1 Residential Use. The Tract is zoned RMF-2 (Multi Family Residential medium density) for multiple family residential use pursuant to Springville City zoning ordinances. All Units and Unit Owners are subject to the uses and restrictions imposed thereby, including, but not limited to, occupancy and parking restrictions. The definition of "family use" shall be that contained in Springville City zoning ordinances.

6.2 Leasing. A Unit Owner may lease his Unit for an initial term of not less than one (1) year evidenced by a writing executed by the Owner and the lessee/tenant and containing a specific statement that such is subject to the provisions of this Declaration. No Owner shall lease less than his entire Unit.

6.3 Restrictions Concerning Common Areas. There shall be no obstructions of the Common Areas by the Owners, their tenants, guests or invitees without the prior written consent of the Management Committee. The Management Committee may, by rules and regulations, prohibit or limit the use of the Common Areas and Facilities as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Management Committee, except

as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon consent of the Management Committee.

6.4 Miscellaneous Restrictions.

(a) Nothing shall be done or kept in any Unit, garage or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase the rate of the insurance on the Project or any part thereof over what the Management Committee, but for such activity or keeping, would pay, without the prior written consent of the Management Committee.

(b) Nothing shall be done or kept in any Unit, garage or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body.

(c) No damage to, or waste of, the Common Areas or any part thereof 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 him or his invitees; provided, however, that any invitee of the Declarant shall not, under any circumstances, be deemed to be an invitee of any other Owner.

(d) No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

(e) Garages shall be used for the parking of one vehicle and at no time shall a garage be used for storage of any kind that would preclude the parking of one vehicle.

(f) Unit patios or balconies shall not be used as storage areas and the hanging of clothing, laundry or decorative items from such areas is prohibited. Decorations pertaining to patriotic or religious holidays are permitted during a reasonable time period.

(g) All Unit windows must be covered within sixty (60) days of occupancy of the Unit and that surface showing to the exterior shall be white or off-white.

(h) Garages or assigned Limited Common Area parking spaces shall not be rented separately from the Unit to which such garage is a part or such assigned Limited Common Area parking space appertains.

6.5 **Animals.** No livestock or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Areas, except that household pets may be kept in Units and permitted in Common Areas subject to strict observance of rules and regulations adopted by the Management Committee.

6.6 **No Violation of Rules and Regulations.** No Owner shall violate the rules and regulations for the use of the Units and the Common Areas as adopted from time to time by the Management Committee.

6.7 Restrictions on Alterations. No structural alterations to any Unit shall be made by any Owner without the prior written consent of the Management Committee.

6.8 Declarant's Right to Sell Units. Notwithstanding anything contained herein to the contrary, until the Declarant has completed and sold all of the Units constructed by it within the Project, the Unit Owners who have purchased Units from either Declarant or others shall not interfere with the completion of the contemplated improvements and sale of the remaining Units. The Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office and model Units, the showing of the Units, and the display of signs.

6.9 Signs. No signs or other advertising shall be displayed which are visible from the exterior of any Unit or on the Common Areas, including "For Sale" signs, except in conformity with the rules and regulations promulgated by the Management Committee.

6.10 RV Parking. The parking of recreational vehicles or boats or other than operational passenger vehicles within the Project is prohibited unless approved in writing by the Management Committee.

Article VII

INSURANCE

7.1 Insurance and Bonds. The Management Committee shall procure and maintain from a company or companies holding a general policy holders rating of B or better or a financial rating of VI or better from Best's Insurance Reports, the following insurance and coverages with respect to the Project:

(a) **Hazard Insurance.** A policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the Units (excluding Unit contents), Common Areas and Limited Common Areas, including any building service equipment, and any common personal property and supplies owned by the Association, with either a Replacement Cost Endorsement or a Guaranteed Replacement Cost Endorsement and an Agreed Amount Endorsement or its equivalent, an Inflation Guard Endorsement, if available, and such other endorsements as the Association shall deem necessary. Such policy or policies shall provide for deductibles which shall not be greater than the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1 %) of the face amount of the policy. Such insurance policy or policies shall name the Association as insured and shall afford protection against loss or damage by fire and other hazards that are normally covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, and such other risks as are normally covered by the standard "all risk" or Cause of Loss-Broad Form policy of insurance. The Policy shall provide that it may not be cancelled or substantially modified by the insurer unless it gives at least ten (10) days' prior written notice thereof to each insured.

(b) **Liability Insurance.** A policy or policies, of public liability insurance to insure the Association, the Management Committee, the Manager and

employees of the Association and the Owners against claims for bodily injury and property damage arising out of the operation, maintenance and use of the Common Areas, any activities thereon, and any conditions of the Common Areas under a Comprehensive General Liability form of policy. Such insurance shall be for such limits and deductibles as the Management Committee may decide, but not less than \$1,000,000 for personal injury and property damage arising out of a single occurrence which coverage shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use to the Common Areas. The Policy shall contain an endorsement which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds, as between themselves, are not prejudiced. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least ten (10) days' prior written notice thereof to each insured.

(c) **Fidelity Insurance.** After Declarant turns over control of the Management Committee pursuant to Section 10.2 below, a policy or policies of blanket fidelity insurance to protect against dishonest acts on the part of any trustee, officer, manager, agent, employee or other person who administers, handles, or is otherwise responsible for the funds of the Association. Such policy or policies shall name the Association as the obligee, shall provide coverage for the maximum sum of funds, including reserves, which will be in the possession or custody of the Association at any time the policy is in force, but in no event less than three (3) months assessment on all Lots, plus reserves. The policy or policies shall provide that they may not be cancelled or substantially modified by the insurer unless it gives at least ten (10) days prior written notice thereof to each insured. The policy shall contain a waiver of any defense for persons who serve without compensation. In the event the Association shall engage the services of a management agent who shall administer, handle or be responsible for the funds of the Association, then the Association shall require such management agent to provide a policy or policies of fidelity insurance which shall provide the same insurance coverage as required of the Association by this Section.

7.2 Worker's Compensation. After Declarant turns over control of the Management Committee pursuant to Section 10.2 below, the Association shall carry worker's compensation and employer's liability insurance and other similar insurance with respect to all employees of the Association in the amounts and in the forms now or hereafter required by law.

7.3 Additional Insurance. After Declarant turns over control of the Management Committee pursuant to Section 10.2 below, the Association may also procure such additional insurance which shall insure the Common Areas, the Association or the Owners and others against such additional risks as may be customarily insured against in connection with condominium projects similar in construction, nature and use to the Project as the Association shall otherwise deem advisable.

7.4 General Requirements. Each policy of insurance obtained by the Association shall be written by insurers licensed in the State of Utah. If reasonably possible, each policy of insurance to be obtained by the Association shall provide:

(a) A waiver of the insurer's right of subrogation against the Association, Owners, and their respective trustees, directors, officers, agents, employees, invitees and tenants;

(b) That it cannot be cancelled, suspended or invalidated or otherwise prejudiced due to the conduct of an Owner or Owners, but only due to the conduct of the Association, and then only after the Association shall have failed to cure or correct the defect within a reasonable time after a written demand to so cure or correct; and

(c) That any "no other insurance" clause shall not apply to any insurance maintained individually by any Owner.

7.5 Additional Insurance Provisions. The following additional provisions shall apply with respect to such insurance:

(a) The Committee shall have the authority to adjust losses.

(b) Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their Mortgagees.

(c) Insurance coverages must be in such amounts and meet other requirements of the Federal National Mortgage Association and, where applicable, the Department of Veteran's Affairs.

7.6 Owners' Insurance. Each Owner shall obtain such insurance, at his or her own expense, providing coverage on Owner's personal property and Owner's personal liability and covering such risks as Owner may deem appropriate. Each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies of the Association, the other Owners, and the trustees, directors, officers, servants, employees, agents, invitees or tenants of any of them, if such insurance can be obtained in the customary practice without substantial additional premium charge for the waiver of rights of subrogation.

Article VIII

DAMAGE, DESTRUCTION AND RESTORATION

8.1 Damage to Project. In the event of damage to or destruction of part or all of the improvements in the Condominium Project, the following procedures shall apply:

(a) If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out as quickly as possible.

(b) - If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out, and, upon approval of at least 50 percent of the affected Unit Owners all affected Owners shall be assessed equally for any deficiency.

(c) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners within one hundred (100) days after the destruction or damage by a vote of at least seventy-five percent (75%) elect to repair or reconstruct the affected improvements, restoration and assessment therefor shall be accomplished in the manner directed under subsection 8.1(b), above.

(d) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within one hundred (100) days after the destruction or damage and by a vote of at least seventy-five percent (75%), elect to repair or reconstruct the affected improvements, the Management Committee shall promptly record with the Utah County Recorder a notice setting forth such facts. Upon the recording of such notice, the provisions of Section 57-8-31 (1) through (4) of the Act shall apply and govern the rights of all parties having an interest in the Project or any of the Units.

8.2 Damage and Destruction. Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the instance and direction of the Management Committee. Any determination which is required to be made by this Article regarding the extent of the damage to or destruction of Project improvements, shall be made by three (3) qualified appraisers selected by the Management Committee. The decision of any two (2) such appraisers shall be conclusive.

Article IX

MORTGAGEE PROTECTION

9.1 Notice of Mortgage. A Mortgagee may request notice as provided herein by written request to the Management Committee which request shall set forth its name and address and the Unit Number of the Unit secured by its Mortgage. The Committee shall maintain records of such Mortgages and Mortgagees. Unless a Mortgagee submits a written request for notice, such Mortgagee shall not receive automatic notices from the Association or Committee pursuant to this Declaration

9.2 Book and Records. Subject to Section 9.1., a Mortgagee shall have the right to examine the books and records of the Association and Committee upon request and to require annual reports of the financial status of the Association.

9.3 Damage or Condemnation. Subject to Section 9.1., a Mortgagee shall be entitled to notice of any condemnation of or damage to a material part of the Unit secured by its Mortgage or to the Project. No Unit Owner or other party shall be entitled to priority over such Mortgagee with respect to the distribution to such Unit of any insurance proceeds or condemnation awards.

9.4 Notice of Default or Lapse. Subject to Section 9.1., each Mortgagee is entitled to written notification from the Management Committee of any default by the Owner of such Unit in the performance of any obligation under the Declaration which is not cured within sixty (60) days; and of a lapse, cancellation or material modification of

any insurance policy or fidelity bond maintained by the Association; and any proposed action which requires the consent of a specified percentage of eligible Mortgage holders.

9.5 Effect of Foreclosure on Liens. Each Mortgagee of a Unit who comes into possession of such Unit by virtue of foreclosure of the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any unpaid claims or assessments and charges against the Unit which accrued prior to the time such holder comes into possession of the Unit, except for claims for a pro-rated share of such assessments or Charges resulting from a pro-rated reallocation of such assessments or charges to all Units in the Project, including the mortgaged Unit.

9.6 Adequate Reserves. The Association, through the Committee, shall establish and maintain an adequate reserve fund for maintenance, repairs and replacement of the Common Areas and Facilities which shall be funded by regular monthly payments rather than by special assessments.

9.7 General Mortgagee Protection. Unless at least seventy-five percent (75%) of the Mortgagees (based on one vote for each Mortgage owned) of Units have given their prior written approval, neither the Management Committee nor the Association of Unit Owners shall:

- (a) By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- (b) Change the pro-rata interest or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or (ii) determining the pro-rata share of ownership of each Unit in the Common Areas;
- (c) Make any material amendment to the Declaration or to the Bylaws of the Association including but not limited to, any amendment which would change the percentage interest of the Unit Owners in the Common Areas;
- (d) By act or omission, seek to amend, partition, subdivide, encumber, sell, or transfer the Common Areas. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this Section; or
- (e) Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by the Act in cases of substantial loss to the Units and/or the Common Areas of the Project.

ASSOCIATION BYLAWS

PURSUANT TO SECTION 57-8-15 OF THE ACT, THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES X, XI AND XII. THE GENERAL PROVISIONS OF ARTICLE XIII OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE DECLARATION AND BYLAWS PROVISIONS, AS THE CASE MAY BE.

Article X

(Bylaws)

MANAGEMENT COMMITTEE

10.1 Status and General Authority. Except as otherwise herein provided, the Condominium Project shall be managed, operated, and maintained by the Management Committee as agent for the Association of Unit Owners. The Committee shall, in connection with its exercise of any of the powers hereinafter provided, constitute a legal entity capable of dealing in the Association's name. The Management Committee shall have, and is hereby granted, the following authority and powers:

(a) The authority without the vote or consent of the Unit Owners or of any other person, except for Mortgagees if required by the terms of their Mortgage, to grant or create on such reasonable terms as it deems advisable, utility and similar easements over, under, across, and through the Common Areas and Facilities;

(b) The authority to execute and record, on behalf of all Unit Owners, any amendments to the Declaration or the Map which have been approved by the vote or consent of Unit Owners necessary to authorize such amendments as set forth in Section 13.4 of the Declaration;

(c) The power to sue and be sued;

(d) The authority to enter into contracts relating to the Common Areas and other matters over which it has jurisdiction, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained;

(e) The power and authority to convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances has been obtained.

(f) The power and authority to purchase, or otherwise acquire, and accept title to, any interest in real property and to add the same to the Project so long as such action has been authorized by any vote or consent which is necessary under the circumstances;

(g) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners; anti

(h) The power and authority to perform any other acts and to enter into any other transactions, subject to the rights of the Management Committee, which may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners. Any instrument executed by the Management Committee relating to the Common Areas of the Project 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.

10.2 Management of Committee: Declarant Control. Until the happening of the first of the following two (2) events, the Management Committee shall be composed of three (3) members, who need not be Owners, selected solely by Declarant:

(a) The expiration of one hundred eighty (180) days following the conveyance of title to Units representing eighty percent (80%) of the total outstanding Association votes; or

(b) The expiration of five (5) years after the first conveyance of title to any Unit purchaser.

Provided, however, that Declarant may waive such right, in whole or in part, at any time prior to the occurrence of either or both of the aforesaid events by (i) notifying Unit Owners in writing of such waiver, and (ii) filing for record in the Office of the Utah County Recorder a written notice of waiver of such right, whereupon Unit Owners shall promptly hold a meeting to elect a new Management Committee, it being established hereby that the control of the Unit Owners in the Management Committee shall automatically vest thirty (30) days following the date such waiver is recorded by Declarant. In the event a Committee seat which was filled by an appointee of or by Declarant becomes vacant, Declarant has the right to select a replacement member to sit on the Committee for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected.

10.3 Management Committee: Composition, Election, Vacancies. Subject to the provisions of Section 10.2, above, the Committee shall be composed of nine (9) members, three (3) to be elected to a three-year term, three (3) to a two-year term and three (3) to a one-year term. As members' terms expire, new members shall be elected for three-year terms. Members shall serve on the Committee until their successors are elected. Committee members must be Owners or if not, then officers, directors, agents or employees of non-individual Owners designated by appropriate written document as determined by the Committee. Vacancies in the Committee membership may be filled by appointment by the remaining members or member of the Committee and said appointees shall serve until the next annual meeting when their successor shall be elected for the unexpired term of the member they were appointed to replace.

10.4 Rights and Duties. The Management Committee, subject to the rights and duties of the Unit Owners, the Declaration, and the Bylaws, shall be responsible for the general management and administration of the Project. It is understood that the Committee has the obligation to maintain the Common Areas.

10.5 Exterior Maintenance. In connection with its duty to maintain Common Areas, the Committee will also provide maintenance upon the exterior of each Building and Unit, and shall, as needed, paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, driveways, parking areas, recreational facilities and any other exterior improvements except Unit glass surfaces.

10.6 Right of Delegation to Manager. The Management Committee may carry out any, of its functions which are capable of delegation through a Manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any such management agreement shall be terminable for cause upon thirty (30) days notice and may run for a reasonable period of from one (1) to three (3) years, renewable by consent of the Association and the Committee. A management agreement negotiated by Declarant shall not exceed two (2) years' duration.

10.7 Payment for Services, Etc. The Management Committee may obtain and pay for the services of such personnel as the Management Committee shall determine to be necessary or desirable for the proper operation of its function in the Project, including the enforcement of this Declaration. The Committee may also hire other persons to furnish snow removal, ground maintenance and other common services to the Project.

10.8 Personal Property Ownership and Use. The Management Committee may acquire and hold for the use and the benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in and to the Common Areas and transferable only with the transfer of a Unit.

10.9 Rules and Regulations. The Management Committee may make reasonable rules and regulations governing the operation and use of the Common Areas and of other matters over which it has jurisdiction, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Management Committee may suspend any Owner's voting rights at the meeting of Unit Owners during any period or periods during which such Owner fails to pay his assessments as required herein. Such Owner's voting rights may also be suspended for non-compliance of other rules and regulations or obligations of such Owner under the Declaration provided such Owner has first had the opportunity of a hearing on the matter to assure that such Owner has been afforded due process. The Management Committee may also impose assessments against any owner for noncompliance with such rules and regulations, take judicial action against any owner to enforce compliance with such rules and regulations or other obligations or to obtain damages for noncompliance, all to the extent provided by law.

10.10 Capital Improvements. The Management Committee shall make no structural alterations, capital additions to, or capital improvements to the Common Areas without the prior approval of the Unit Owners holding a majority of the voting power.

10.11 Extended Rights. The Management Committee may exercise any other right or privilege given to it expressly by the Declaration, the Bylaws or by law and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

10.12 Architectural Control. The Management Committee shall act in all matters pertaining to architectural control and shall establish rules and procedures for submitting plans for approval of any proposed construction, alteration, remodeling, etc., involving any Unit.

10.13 Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorney's fees reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee.

10.14 Committee Meetings, Quorum, Board Action. The Committee may establish its rules for meetings, whether regular or special. A majority of current Committee members shall constitute a quorum and the action of a majority of those attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Committee. Action by consent shall require the unanimous consent of all current Committee members.

Article XI

(Bylaws)

ASSOCIATION VOTING, MEETINGS AND OFFICERS

11.1 Votes. The Association shall initially have a total of thirty-two (32) votes, one (1) for each Unit. Upon the annexation of Additional Land into the Project and development of additional Units, the total number of Association votes increase to provide one (1) for each additional Unit up to a maximum of two hundred sixteen (216) Units, including any Units owned by Declarant.

11.2 Multiple Ownership. If a Unit has more than one Owner, the vote relating to such Unit shall be exercised as such Owners may determine among themselves, but in no event shall more than the total vote attributable to such Unit be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Unit unless an objection is made at the meeting or in writing by another co-owner of the same Unit, in which event no vote will be counted with respect to such Unit except to determine the presence or absence of a quorum.

11.3 Place of Meeting. Meetings of the Association shall be held at such suitable place convenient to the Owners as maybe designated by the Management Committee in its notice.

11.4 Annual Meetings. Annual meetings of Members of the Association shall be held in the third quarter of each calendar year beginning in the year 2007 on such day and time as is set forth in the notice therefor. At such annual meetings there shall be elected members of the Management Committee, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

11.5 Special Meetings. The President shall call a special meeting of the Owners as directed by a resolution of the Management Committee or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by eighty percent (80%) or more of the votes represented by Owners present, either in person or by proxy.

11.6 Notice of Meetings. The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least ten (10), but not more than twenty (20), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

11.7 Quorum. Owners present at any meeting of Members duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Members collectively be entitled to cast at least a majority of the total Association votes eligible to vote.

11.8 Adjourned Meetings. If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called at which time the requirements for a quorum shall be reduced by one-half that required by the preceding meeting.

11.9 Voting. If a quorum is present, the affirmative vote of a majority of the votes present at the meeting or represented by proxy shall be the act of the association, unless the vote of a greater number is required by the Act, the Declaration or the Bylaws, in which case it shall require the affirmative vote of such greater number.

11.10 Proxies. At all meetings of Members, a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Association prior to the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise permitted in the Act and so provided in the proxy.

11.11 Consent Equivalent to Vote. In those cases in which the Act or this Declaration require the vote of a stated percentage of the Project's undivided ownership interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting consents in writing to such transaction from Unit Owners who hold at least the necessary percentage of undivided ownership interest.

11.12 Officers. The Association shall have a President, a Vice President and a Secretary/Treasurer all of whom shall be elected by and from the Management Committee. The Committee may appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Management Committee in an organizational meeting of the Committee immediately following each annual meeting of Members at which the new Management Committee has been elected. Vacancies may be filled or new officers appointed by the Management Committee. Any officer may be removed by the

Management Committee whenever in its judgment the best interests of the Association will be served thereby.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Management Committee. He shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Management Committee shall appoint some other Member of the Committee to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Management Committee.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Management Committee and the minutes of all meetings of the Association. He shall have charge of such books and records as the Management Committee may direct and he shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Management Committee.

Article XII

(Bylaws)

ASSESSMENTS

12.1 **Agreement to Pay Assessments.** Each Owner of a Unit, by the acceptance of a deed or contract therefor, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with the Association, all other Unit Owners and with the Management Committee to pay monthly and/or annual assessments for the purposes provided in the Declaration and Bylaws, and special assessments for capital improvements and other matters as provided in the Declaration and Bylaws. Such assessments shall be fixed, established and collected from time to time in the manner provided herein by the Management Committee which alone shall have such power to assess.

12.2 **Basis of Assessments.** All assessments shall be uniform in application. The annual assessments against all Units shall be based upon a budget of 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 Common Areas and/or the Project, which estimates may include among other things, expenses of management, taxes and special assessments, if any, levied by governmental authorities; premiums for all insurance which the Management Committee is required or permitted to maintain pursuant hereto; common

lighting, water, repair and maintenance of the Common Areas; wages for employees of the Committee; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Committee for the benefit of the Owners or by reason of the Declaration or Bylaws.

12.3 Apportionment of Expenses. Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Units in proportion to their respective undivided interest in and to the Common Areas; provided, however, that for this purpose Declarant shall be deemed to own only the undivided interest in the Common Areas based upon Units which have been completed but not yet conveyed by Declarant.

12.4 Method, Payment of Assessments, Etc. Annual assessments shall be made on a calendar year basis. The Committee shall give written notice to each Owner as to the amount of the annual assessment with respect to his Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year; provided, however, that the first annual assessment shall be for the balance of the calendar year remaining after the day fixed by the Committee as the date of commencement of the assessment. Such annual assessment may be paid in twelve (12) equal monthly payments as determined by the Committee. The first such monthly assessment shall become due and payable upon the date a Unit Owner purchases his Unit, whether by conveyance of title or by entering into a contract of sale and purchase, and thereafter each monthly payment shall be due and payable on the first day of each and every month, in advance. The Committee may, if it is deemed best to alleviate administrative time and effort, require that the annual assessment be paid in four (4) quarterly installments, in advance. Each monthly payment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within fifteen (15) days after such date.

12.5 Initial Fees. In addition, each Owner (other than Declarant) shall be required to prepay at the time of purchase of his Unit, whether as a first time or subsequent Owner, a sum equal to two times the then monthly installment of the annual assessment which shall be in addition to any proration of assessment which may be due for the month in which such purchase takes place. Such fees shall become part of the Association's general fund to be utilized as necessary.

12.6 Maximum Annual Assessment. Until January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner the maximum annual assessment shall be \$840 (or \$105 per month) per Unit. From and after January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each calendar year thereafter by not more than twenty-five percent (25%) above the maximum annual assessment for the previous year without the vote of Owners entitled to cast a majority of the total Association votes entitled to vote.

12.7 Special Assessments. In addition to the annual assessments authorized hereunder, the Management Committee may levy in any assessment year special assessments, subject to the provisions of Section 10.10, above, payable over such period

as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas of the Project or any other part thereof, or for any other expenses incurred or to be incurred as provided in the Declaration. This Section shall not be construed as an independent source of authority for the Management Committee to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized herein. Any amount assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interest in and to the Common Areas, Declarant's interest in and to the Common Areas shall be determined on the same basis set in Section 12.3, above. Notice in writing of the amount of such special assessment and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment, or any portion thereof as determined by the Committee, shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

12.8 Liens for Unpaid Assessments. All sums assessed to any Unit pursuant to this Article, together with interest thereon as provided herein, and all costs and expenses incurred, with or without suit or before or after judgment, in collecting delinquent accounts or foreclosing against the Condominium Units concerned, shall be secured by a lien on such Unit in favor of the Association and, upon recording of a notice of lien by the Management Committee, shall be a lien upon the Unit prior to all other liens and encumbrances, recorded or unrecorded, except:

- (a) Tax and special assessment liens on the Unit in favor of any assessing agency or special improvement district; and
- (b) Liens of Mortgagees; and
- (c) Any other encumbrances on the interest of the Unit Owner recorded prior to the date notice of the lien provided for herein is recorded, which by law would be a lien prior to subsequently recorded encumbrances.

To evidence a lien for sums assessed pursuant to this Article, the Management Committee shall prepare a written notice of lien setting forth the amount of the assessment, the due date, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed by or on behalf of the Management Committee and may be recorded in the Office of the County Recorder of Utah County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by foreclosure by the Management Committee in the same manner in which a mortgage or trust deed on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the cost and expenses of such proceeding, the cost and expenses of filing the notice of lien, and all reasonable attorney's fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The lien shall also secure, and the Owner shall also be required to pay to the Management Committee any assessments against the Unit which shall become due during the period of foreclosure. The Management Committee shall have the right and the power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and, if it is the purchaser, to acquire, hold, convey,

lease, rent, encumber, use and otherwise deal with the subject Condominium Unit as the Owner thereof.

12.9 Release of Lien. A release of notice of lien shall be executed by the Management Committee and recorded in the Office of the County Recorder of Utah County, Utah, upon payment of all sums owed and by a lien which has been made the subject of a recorded notice of lien.

12.10 Payment by Encumbrancer. Any encumbrancer holding a lien on a Unit may, but shall not be required to, pay any amounts secured by the lien created by this Article, and upon such payments such encumbrancer shall be subrogated to all rights of the Management Committee with respect to such lien, including priority. The Management Committee, upon written request and evidence of such encumbrance, shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than thirty (30) days after the same shall have become due.

12.11 Personal Obligation of Owner. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Association. A suit to recover a money judgment for such personal obligation shall be maintainable by the Management Committee, as agent for the Association, without foreclosing or waiving the lien securing the same. No Owner may avoid, diminish or abate such personal obligation by waiver of the use and enjoyment of any of the Common Areas, by abandonment of his Unit, or by making a claim for inconvenience or discomfort caused by construction or repairs within the Project.

12.12 Information Concerning Unpaid Assessments. Upon payment of a reasonable fee not to exceed Twenty Dollars (\$20.00) and upon written request of any Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Management Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current annual assessment and the portion thereof, if any, which has theretofore been paid; and credit for advance payments of prepaid items, including but not limited to, an Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Management Committee in favor of persons who rely thereon in good faith.

12.13 Purchaser's Obligation. A purchaser of a Unit shall be jointly and severally liable with the seller thereof for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

12.14 No Abatement. No diminution or abatement of any assessment shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Project; (b) the making of (or failure to make) any repairs or improvements to, or the maintenance of, any common areas and facilities of the Project or any part thereof; or (c) from any action taken to comply with the provisions of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

Article XIII

GENERAL PROVISIONS

13.1 **Enforcement.** Each Unit Owner shall comply strictly with the provisions of this Declaration, the Bylaws, the administrative rules and regulations promulgated by the Management Committee pursuant thereto as the same may be lawfully adopted from time to time, and with the decisions adopted pursuant to this Declaration, Bylaws and such administrative rules and regulations. Defaulting Unit Owners shall pay all costs and expenses incurred in enforcing the provisions hereof, including reasonable attorney's fees and costs and moneys paid and due for damages or injunctive relief, or both, maintainable by the Management Committee on behalf of the Association of Unit Owners, or in a proper case, by an aggrieved Unit Owner.

13.2 **Party Walls.** Each wall which is built as a part of the original construction of the Units upon the Project and placed on the dividing line between Units shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. In regard to repair and maintenance, the cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion of such use; provided, however, this provision shall not prejudice the right of an Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions.

13.3 **Disclaimers and Indemnities.** Each Unit Owner, upon acceptance of the deed to his Unit, shall be deemed to have acknowledged and accepted the proximity of the Project to the following existing facilities or situations;

- (a) The Southern Utah Valley Solid Waste District ("SUVSWD") Transfer Station located at 2450 West 400 South, Springville, Utah;
- (b) The Utah County Jail located at 3075 North Main, Spanish Fork, Utah;
- (c) The agricultural nature and use of adjoining properties (the "Agricultural Properties") and;
- (d) The commercial, industrial and retail uses of adjoining properties.

Such acknowledgement and acceptance shall be deemed to include an understanding by the Unit Owner that (a) the said facilities and situations may enlarge in the future and the intensity of the uses in each instance may thereby increase; (b) the Unit Owner may therefore be limited, to the extent allowed by law, from bringing any nuisance or similar action against Declarant, Springville City, SUVSWD, Utah County or any owner or user of the Agricultural Properties; and (c) that the provisions of this Section 13.3 and its subsections shall be construed as covenants running with the land in favor of Declarant, Springville City, SUVSWD, Utah County and any owner or user of such agricultural, commercial, or retail properties.

13.4 **Amendments.** Except as provided below, the vote of at least a majority of the undivided ownership interest in and to the Common Areas and Facilities shall be required to amend this Declaration (including the Association Bylaws set forth herein) or

the Record of Survey 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. Notwithstanding the above, until Units representing eighty percent (80%) of the undivided ownership interest in the Project have been sold, Declarant alone shall have and is hereby vested with the right to effect such amendments. Such right in Declarant to amend shall obtain without regard to the subject matter of amendment, so long as the amendment involved is consistent with the Act.

13.5 Consent Equivalent to Vote. In those cases in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of undivided ownership interest.

13.6 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land, and/or equitable servitudes, as the case may be, and shall be binding upon and inure to the benefit of Declarant, all parties who hereafter acquire an interest in a Unit or in the Project, and their respective grantees, lessees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, the provisions of this Declaration and the rules, regulations, agreements, instruments, and determinations contemplated by this Declaration, and failure to comply therewith shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Committee on behalf of the Association of Unit Owners, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents and agrees to be bound by each and every provision of this Declaration.

13.7 Agent for Service of Process. Curtis T. Hansen, whose address is Canyon River Center, Ste. 400, 727 North 1550 East, Orem, UT 84097, is designated initially as the person to receive service of process in cases authorized by the Act; provided, however, that the Management Committee shall have the right to appoint a successor agent for service of process who shall be a resident of the State of Utah. Such successor and his or her address shall be specified by an appropriate amendment filed in the Office of the Recorder of Utah County, Utah.

13.8 Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of time lapse or the number of violations or breaches which may occur.

13.9 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural and the plural the singular. The use of any gender shall include all genders.

13.10 Severability. If any of the provisions of this Declaration or any Article or Section, sentence, clause, phrase or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of the

Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstance shall not be affected by such invalidity.

13.11 **Topical Headings.** The headings appearing at the beginning of the Sections or Articles of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of this Declaration or any Section or provision hereof.

13.12 **Effective Date.** This Declaration shall take effect upon recording in the Office of the County Recorder of Utah County, Utah.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed the day and year first set forth above.

DECLARANT:

BROOKLINE PROPERTIES, L.C.

By: *L. Wayne Ross*
Name: L. Wayne Ross
Its: Manager

STATE OF UTAH)

: ss.

COUNTY OF UTAH)

On the 25th day of October in the year 2006 before me, the undersigned, a Notary Public in and for said State, personally appeared L. Wayne Ross personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the entities upon behalf of which the individual acted executed the instrument.

Steven Farnsworth
NOTARY PUBLIC

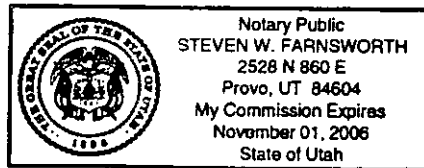


EXHIBIT A
to
DECLARATION OF CONDOMINIUM
of
BROOKLINE CONDOMINIUMS
Springville, Utah

THIS DESCRIPTION OF THE EXPANSION LAND IS SET FORTH AND ATTACHED IN THIS EXHIBIT A TO THE DECLARATION SOLELY FOR PURPOSES OF IDENTIFICATION. THE DECLARATION IS NOT INTENDED AS AND SHOULD NOT BE DEEMED TO CONSTITUTE ANY LIEN, ENCUMBRANCE, RESTRICTION, OR LIMITATION UPON ANY PORTION OF THE EXPANSION LAND UNLESS AND UNTIL SUCH PORTION IS ADDED TO THE DEVELOPMENT IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

Real property located in the City of Springville, County and state of Utah described as follows:

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 7 SOUTH, RANGE 2 EAST, AND SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 7 SOUTH, RANGE 3 EAST, S.L.B. & M., SPRINGVILLE, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 36: THENCE N.00°21'27"W. A DISTANCE OF 192.90 FEET AND EAST A DISTANCE OF 175.56 FEET TO THE REAL POINT OF BEGINNING. BASIS OF BEARING IS S.88°44'34"W. ALONG THE SECTION LINE A DISTANCE OF 2,648.33 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 36.

THENCE N. 89°19'42" W. A DISTANCE OF 661.46 FEET; THENCE N. 00°02'55" E. A DISTANCE OF 655.53 FEET; THENCE S. 89°29'56" E. A DISTANCE OF 342.57 FEET; THENCE S. 00°00'00" E. A DISTANCE OF 136.04 FEET; THENCE N. 90°00'00" W. A DISTANCE OF 63.71 FEET; THENCE S. 00°00'00" E. A DISTANCE OF 165.78 FEET; THENCE N. 90°00'00" E. A DISTANCE OF 321.18 FEET; THENCE S. 00°00'00" W. A DISTANCE OF 32.91 FEET; THENCE N. 90°00'00" E. A DISTANCE OF 142.52 FEET; THENCE N. 89°59'56" E. A DISTANCE OF 417.32 FEET; THENCE N. 00°00'00" E. A DISTANCE OF 47.08 FEET; THENCE N. 90°00'00" E. A DISTANCE OF 90.33 FEET; THENCE N. 00°00'00" E. A DISTANCE OF 19.96 FEET; THENCE N. 90°00'00" E. A DISTANCE OF 79.48 FEET; THENCE S. 00°20'01" W. A DISTANCE OF 397.70 FEET; THENCE N. 89°33'45" W. A DISTANCE OF 666.52 FEET MORE OR LESS TO THE POINT OF BEGINNING. CONTAINING 12.73 ACRES OF LAND.