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AFTER RECORDING PLEASE RETURN TO:

Hobble Creek Properties LLC
C/o Jud Harward
1988 West Center
Springville, UT 84663

RECEIVED
SPRINGVILLE CITY

MAY 24 2002

INITIALS _____

ENT 143854;2002 PG 1 of 25
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2002 Nov 27 9:16 am FEE 62.00 BY SM
RECORDED FOR SPRINGVILLE CITY

**DECLARATION OF CONDOMINIUM
(Including Bylaws)**

OF

BROOKSIDE CROSSING CONDOMINIUM

**[An Office Condominium Project]
Springville, Utah**

THIS DECLARATION OF CONDOMINIUM is made of this _____ day of April 2002, by **Hobble Creek Properties LLC**, a Utah limited liability company ("Declarant"), joined and consented to herein by certain owners of undivided interests in the Tract (the "Undivided Interest Owners"), pursuant to the provisions of Sections 57-8-1 *et seq.* of the Utah Code, as amended, known as the Condominium Ownership Act (the "Act").

RECITALS:

A. Declarant is the developer and majority interest owner of record of that certain Tract of land, more particularly described in Article II hereof, together with various improvements thereon.

B. The Undivided Interest Owners own certain of the improvements existing on the Tract, which, upon the concurrent recordation of the Record of Survey Map and this Declaration, will be deeded to the respective Undivided Interest Owners as Condominium Units within the Project. Nothing in this Declaration will be deemed or construed to make Declarant and the Undivided Interest Owners, or any of them, partners, co-developers or joint ventures in the Project for any purpose, nor shall the Undivided Interest Owners be deemed to be a Declarant hereunder.

C. Declarant has constructed, or is in the process of constructing, upon the Tract certain improvements so as to enable its use and operation as an office condominium project. The construction of all such improvements has been and shall be performed in accordance with the information contained in this Declaration and in the Record of Survey Map.

D. Declarant and the Undivided Interest Owners desire, by recording this Declaration, to Submit the entirety of the Tract and all existing or future improvements constructed thereon to the provisions of Act as an office condominium project to be known as **Brookside Crossing Condominiums**.

E. Declarant and the Undivided Interest Owners intend that fee title to the individual Units contained in the Project, together with an undivided percentage interest in an to the Common Areas and Facilities appurtenant to such Units, be subject to the covenants, conditions, restrictions, limitations, and easements herein set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant and the Undivided Interest Owners hereby make the following declarations:

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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:

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

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

Buildings shall mean and refer to the structures described on the Map and comprising a part of the Project. A Building may contain one or more Units.

Building Common Area shall mean and refer to Limited Common Area (including equipment) within a Building which is reserved for the exclusive use of the Units within such Building to which such Limited Common Area is appurtenant and physically attached, to the exclusion of all other Units.

Bylaws shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in Articles X, XI, XII (as permitted by Section 57-8-15 of the Act).

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

(a) The real property and interest in real property which this Declaration submits to the provisions of the Act, including the entirety of the Tract and all lawns, landscaping, decorative gardens or fences, rockeries, outdoor lighting, sidewalks, walkways, parking lots and private ways located thereon, but excluding all individual Condominium Units as herein defined;

(b) All Common Areas and Facilities, as above defined, which may be designated as such on the Survey Map, and 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;

(c) All foundations, columns, beams, interior load bearing walls, and supports of the Buildings;

(d) Any halls, corridors, stairs, stairways, entrances, exits, and landings which are designed for the use of more than one Unit and which are not contained within a Unit;

(e) Those portions of the exterior walls of the Buildings (excluding glass in windows) beyond the exposed face of the dry wall on the Unit side of such walls; those portions of all walls which enclose Units and divide them from corridors, stairs and other Common Areas and which are located beyond the unfinished surface on the Unit side of such walls; those portions of all walls located between the Units within the unfinished surfaces of such walls on either side thereof; the floors; and the roof;

(f) All installations and equipment designed and intended to provide utility services for common use, including (but not limited to) telephone, electricity, gas, water, sewer, heat, ventilation and air conditioning (including all pipes, ducts, vents, wires, cables, and conduits designed and intended for common use in connection therewith), whether or not located within the horizontal and vertical boundaries of a Unit, but excluding from such installations and equipment all parts thereof, and all items affixed or connected thereto, located within the exterior boundaries of a Unit and designed and intended for the sole use of such Unit;

(g) All apparatus and equipment designed and intended for common use such as (but not necessarily limited to) pumps, motors, fans, clocks, compressors, and control apparatus and equipment, whether or not located within the horizontal and vertical boundaries of a Unit, but excluding from such apparatus or equipment all parts thereof, and all items affixed or connected thereto, located within the exterior boundaries of a Unit and designed and intended for the sole use of such Unit;

(h) All cleaning and maintenance equipment and other personal property at any time leased, acquired, owned, or held by the Association for the common use or benefit of all Owners; and

(i) All other parts of the Project designed and intended for, or normally in, common use or necessary or convenient to the existence, maintenance, safety, or management of the Project.

Common Expenses shall mean and refer to all items 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.

Condominium Project or Project shall mean and refer to **Brookside Crossing Condominiums**, as the same shall exist from time to time.

Condominium Unit or Unit shall mean and refer to one of the individual air spaces, which is designated as a numbered Unit on the Record of Survey Map. Notwithstanding any information on the Record of Survey Map to the contrary, each Unit is or shall be deemed to be bounded by the interior surfaces of the wall, floors, and ceilings, and the exterior surfaces of all window glass and doors on or along the perimeter boundaries of such individual air space, as said boundaries are shown on the Map. All interior portions of walls, and portion of floors and ceilings under or over them on or along the perimeters of a Unit shall constitute a part of the Common Areas and Facilities. A Unit shall also include any non-load bearing walls and partitions which are wholly confined within its vertical and horizontal perimeters; provided, however, that a Unit shall not include any part or portion of the Common Areas defined in paragraphs (c), (f), or (g) of the Common Area definition, above, but shall include all installations, equipment, apparatus, and items affixed or connected thereto of the character contemplated by said paragraphs (f) and (g) which are located within the exterior boundaries of such Unit and which are designed for the sole use of such Unit. A Unit shall also include all fixtures confined within its vertical and horizontal perimeters and intended for the sole use of such Units. The exterior surface of a window glass or door shall mean the plane at which such surface is located when the window or door is closed. A Unit shall also include an equal share of Building Common Area, which is appurtenant to it, if any, based on the number of Units sharing such Building Common Area within the same Building.

Declaration shall mean and refer to this **Declaration of Condominium (Including Bylaws)** as the same may hereafter be 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.

Limited Common Areas and Facilities or Limited Common Areas shall mean and refer to those Common Areas, if any, designated in this Declaration or the Act or as may be shown on the Map as reserved for the exclusive use of a certain Unit or Units to which the same are physically attached or, in the case of equipment, to which they provide service to the exclusions of other Units.

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.

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

Mortgage shall mean and include both a recorded first mortgage on one or more Condominium Units and a recorded first deed of trust on one or more Condominium Units.

Mortgagee shall mean and include both a mortgagee and beneficiary under a recorded Mortgage as defined above.

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 **Brookside Crossing Condominiums, City of Springville, Utah County, Utah**, executed and acknowledged by

Declarant, consisting of one (1) sheet prepared by Dennis P. CarLisle, a duly registered Utah Land Surveyor holding Certificate No. 172675, as said by Map may hereafter be modified or amended in accordance with law and the provisions hereof.

Tract shall mean and refer to the real property described in Section 2.01 which Article II of this Declaration submits to the Act.

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

Unit Owner or **Owner** shall mean and refer to the person or persons owning a fee simple interest in a Condominium Unit. 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

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

BOUNDARY DESCRIPTION

BEGINNING AT A POINT LOCATED N89° 47'56" W 1,450.11 FEET AND NORTH 126.27 FEET FROM THE SOUTHWEST CORNER OF SECTION 33, T7S, R3E, S.L.B & M; THENCE

| COURSE | DISTANCE | REMARKS |
|---------------------|----------|---------------------------|
| N86° 42'36" W | 291.02 | |
| N0° 36'00" W | 83.69 | |
| S88° 08'46" E | 2.28 | |
| N0° 10'36" E | 325.91 | |
| S89° 42'30" E | 150.74 | |
| S0° 34'00" W | 235.95 | |
| N89° 40'00" W | 18.52 | |
| S1° 10'30" W | 95.01 | |
| S87° 55'25" E | 180.91 | |
| S0° 23'18" W | 88.63 | TO THE POINT OF BEGINNING |
| CONTAINS: .06 ACRES | | |

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel or 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 other improvements described in this Declaration or in the Survey Map recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; and (ii) to improve portions of the said property with such other 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 RESTRICTONS CONTAINED IN THIS DECLARATION.**

2.02 **Division into Condominium Units; Ownership Interests.** The Project is hereby divided into Four (4) Condominium Units as set forth on the Map, each such Condominium Unit consisting of a Unit and an appurtenant undivided ownership interest in and to the Common Areas and Facilities as is set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

ARTICLE III

IMPROVEMENTS

3.01 **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, the dimensions of the Units, and other significant facts relating to the Buildings, Units and to the Common Areas and Facilities.

3.02 **Description of Buildings and Units.** There are Three (3) Three level commercial Buildings, each containing from one (1) to Two (2) Units. Each Unit has it's separate mechanical apparatus room to service the Unit. The rest rooms are available to each Unit from interior entrances. Construction is wood frame with brick facing, precast concrete, cedar wood roof and aluminum soffit fascia. All Buildings have main floor, 2nd floor, and basement levels. Common Area landscaping, walkways and rockeries accessible from basement levels, separate the Buildings. Each Unit's size and configurations is reflected on the Map and the square footage areas for all Units are set forth in **Exhibit A**. Parking is open and is located adjacent to the Buildings. Exterior stairways and handicap ramps are private areas and serve the basement levels of such Buildings as reflected on the Map.

3.03 **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 Building Common Area and 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.

3.04 **Common Areas.** To the extent they exist, the Building Common Areas, Common Areas and Limited Common Areas contained in the Project are described and identified in Article I hereof and/or on the Map. Neither the ownership of undivided interest in and to the Common Areas nor the right of exclusive use of a Building Common Area or a Limited Common Area shall be separated from the Unit or Units to which they appertain, or, in the case of the Building Common Areas, to which they are a part, 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 as will any separate obligations or assessments pertaining thereto.

3.05 **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 **BROOKSIDE CROSSING CONDOMINIUMS** as the same is identified in the Record of Survey Map therefore recorded in Utah County, Utah as Entry ____ (as said Record of Survey Map may have heretofore been amended or supplemental) and in the Declaration of Condominium of Brookside Crossing Condominiums recorded in Utah County, Utah as Entry ____ in Book ____, Page ____ (as said Declaration may have heretofore been amended), **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).

Such description will be construed to describe the Unit, together with the appurtenant undivided ownership interest in and to the Common Areas and Facilities 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 INCIDENCE OF OWNERSHIP

4.01 **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.

4.02 **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 any Building Common Areas or Limited Common Areas appurtenant to any Unit, shall always be conveyed, devised, encumbered, and otherwise effected only

together and may never be separated from one another. Every gift, device, 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.

4.03 **Membership in Association.** Each 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.

4.04 **Undivided Interest in Common Areas and Facilities.** Each Unit Owner shall have, for each Unit owned, an appurtenant undivided ownership interest in and to the Common Areas and Facilities as set forth and described in **Exhibit A**.

4.05 **No Partition.** The Common Areas and Facilities shall be owned in common by all the owners of Units in the ratio of their undivided appurtenant interest as reflected in **Exhibit A** and no Unit Owner may bring action for partition thereof.

4.06 **Use of Common Area and Limited Common Areas.** Subject to the limitations contained in the 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 any Limited Common Areas designated herein or on the Map or inferred by the Act which appertain to such Owner's Unit.

4.07 **Duty of Owner to Pay Taxes on Unit Owned.** It is understood that under the Act each Unit (an its percentage of undivided ownership interest as reflected in **Exhibit A**), in the Project is subject to separate assessment and taxation of each taxing authority and 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 as such. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against such Owner relative to his Condominium Unit.

4.08 **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.

4.09 **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 boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in clean and sanitary condition, he shall be responsible for the maintenance, repair or replacement of any plumbing or lighting fixtures, or other appliances, equipment or fixtures that may be in, or connected with his Unit.

4.10 **Maintenance of Building and Limited Common Areas.** Each Owner shall keep the Building and Limited Common Areas, if any, designed for use in connection with his Unit in a clean, sanitary and attractive condition at all times notwithstanding any duty or obligation of the Committee, on behalf of the Association, to maintain and repair the Common Areas and Limited Common Areas pursuant to the provisions of Article X; **provided, however, that the expenses attributable to the maintenance, upkeep and repair of the Building Common Areas within the Project shall be apportioned as provided in Section 12.03.**

4.11 **Division of Utility Costs.** The cost of all utility or municipal services (including, without limitation, water, sewer, garbage collection, telephone, electrical, and gas) which are separately metered (if metering is applicable to the service in question) and billed by the suppliers concerned to the individual Units shall be paid by the Owner of the respective Unit. The cost of all such service which are not separately metered and billed to such individual Units but which benefit all Units and the Project as a whole, shall be paid by the Association as Common Expense. Notwithstanding anything to the contrary contained within the preceding portion of this Section 4.11, in the event that any utility or municipal service is separately metered (if metering is applicable to the service in question) and billed to one or more Units and a portion of such service benefits in whole or in part any other Unit or the Common Areas, the Association shall reimburse or credit the Owner of the Unit so billed for the cost of such portion; the determination of such portion, and the cost related thereto which shall be borne by the Association as a Common Expense, shall be made by the Association in a fair and reasonable manner on the basis of the best information reasonably available at the time, and shall be final and binding upon all Unit Owners. **Building Common Area expenses shall be shared as provided in Section 12.03.**

ARTICLE V

EASEMENTS

5.01 **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 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.

5.02 **Repair of Common Areas.** If any of the Common Areas (including any Limited Common Area) are or may be located within any of the Units or may be conveniently accessible only through such Unit, the Owners of the other Units shall have the irrevocable right, to be exercised by the Committee as their agent, to have access to such 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 result of emergency repairs within another Unit at the instance of the Committee of Unit Owners, shall be an expense of all the affected Unit Owners and assessed proportionately; provided, that if such damage is the result of negligence of the Owner of the Unit, his 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.

5.03 **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.

5.04 **Utility Services.** As reflected on the Map, there is a utility easement upon, across, over and under the Common Areas for ingress, egress, installations, replacing, repairing and maintaining all utilities, including but not limited to, water, sewer, gas, telephone, electricity, and other utility services.

5.05 **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 Building or Common Area designated for use in the 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

6.01 **Office and Commercial Use.** The Tract is zoned for commercial usage pursuant to Springville City Ordinances and all Units and Unit Owners are subject to the uses and restrictions imposed thereby, including, but not limited to, occupancy and parking restrictions. All Units within the Project shall be used exclusively for business and professional offices and uses commonly found in first-class commercial complexes of the nature of the Project and for no other purposes. No Unit or any part thereof within the Project shall be used for any of the following purposes: Manufacturing facilities or residential uses.

6.02 **Leasing.** A Unit Owner may lease his Unit for any term 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. An Owner may lease less than his entire Unit.

6.03 **Restrictions Concerning Common Areas.** There shall be no obstructions of the Common Areas by the Owners, their tenants, guests or invites 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 on, or removed from the Common Areas except upon consent of the Management Committee.

6.04 **Miscellaneous Restrictions.** Nothing shall be done or kept in any Unit 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 of the rate of the insurance on the Project or any part thereof over what the Management Committee, but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit 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. 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. 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 occupying a Unit.

6.05 **No Pets or Animals.** No pets or animals except for Seeing Eye dogs shall be permitted in any Unit, in the Common Areas, or in any other part of the Project.

6.06 **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.

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

6.08 **Declarant's Right to Sell Units.** Notwithstanding anything contained herein to the contrary, until the Declarant has completed and sold all of the Units, the Unit Owner who have purchased Units from the Declarants shall not interfere with the completion of the contemplated construction 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, the showing of the Units, and the display of signs.

6.09 **Restrictions on Signs.** No signs, flags, or advertising devices of any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained at any place on the exterior of a Building or on any other part of the Project without the prior inspection and written approval of the Management Committee, except as may be necessary temporarily to caution or warn of danger. All signage, whether original or replacement, shall be professionally made and shall be of the style and theme established by the Committee for the Project as a whole.

6.10 **Zoning Compliance.** Notwithstanding the provisions of Section 6.09, any sign, banner, or similar devices located in the Project shall comply with applicable zoning or sign ordinances of Springville City, Utah.

ARTICLE VII

INSURANCE

7.01 **Insurance and Bonds.** The Management Committee shall secure or caused to be secured and maintained at all times the following insurance and bond coverage with respect to the Project:

(a) A policy or policies of fire and casualty insurance with extended coverage endorsement, for the full insurable replacement value of the entire Project, **including Units but excluding contents of Units.** Such policy and policies shall be made payable to the Committee and all persons holding an interest in Project or any of the Units, as their interest may appear.

(b) An appropriate fidelity bond coverage for any person or entity handling funds of the Management Committee, including, but not limited to, employees of a professional manager, if any, the amount of such coverage to be not less than the estimated maximum of funds, including reserves, in the custody of such person or entity at any given time during the bond term, all as determined by the Management Committee, but in no event less than a sum equal to three months aggregate

assessments on all Units, plus reserve funds. The provisions of this Section 7.01 (b) may be waived in a written signed at least seventy-five percent (75%) of the outstanding Association votes as set forth in **Exhibit A.**

(c) A policy of policies insuring the Committee, the Manager, and the Unit Owners against any liability incident to the ownership, use of operation of the Project, or of any Unit, which may arise among themselves, to the public, and to any invitees of tenants of the Project or of the Unit Owners. Limits of liability under such insurance shall not be less than \$300,000 for any person injured, \$1,000,000 for all persons injured in any one accident, and \$1,000,000 for property damaged resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.

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

(a) In addition to the insurance described above, the Committee shall secure and at all times maintain insurance against such risk as are or hereafter may be customarily insured against in the connection with condominium project similar to the Project in construction, nature and use.

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

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

(d) Each policy of insurance obtained by the Committee shall, if possible, provide: a waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents, and guests; that it cannot be canceled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager without prior written demand that the defect be cured; and that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.

(e) Each Unit Owner shall, at his own expense, obtain and maintain in force at all times, policies of hazard and casualty insurance relative to his Unit's contents.

(f) **The cost for the insurance required under Section 7.01(a) to the Units shall be allocated and assessed to Unit Owners in proportion to their respective undivided ownership interests as provided in Exhibit A.**

ARTICAL VIII

DAMAGE, DESTRUCTION AND RESTORATION

In the event of damage to or destruction of part or all of the improvements in the Condominium Projects, 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 (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 the Unit Owners, all Owners shall be assessed for any deficiency in proportion to their respective undivided ownership interests pursuant to **Exhibit A**.

(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 Committee are insufficient to accomplish restoration, and if the Unit Owners, with one hundred (100) days after the destruction or damage, vote to repair or reconstruct the affected improvements, restoration and assessment therefore shall be accomplished in the manner directed under subsection (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, vote 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.

(e) Any reconstruction or repair which is required to be carried out by the 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 qualified appraisers selected by the Management Committee. The decision of any two such appraisers shall be conclusive.

ARTICLE IX

MORTGAGES AND MORTGAGEE PROTECTION

9.01 **Notice of Mortgage.** Any Owner who mortgages his Unit shall furnish the Committee the name and address for such Mortgagee, and the Committee shall maintain such information in a book entitled "Mortgages of Units." The Committee shall report to such Mortgagee any unpaid assessments due from the Owner of such Unit at the same time as the Committee makes demand on the Owner thereof for payment of such assessment. Each Mortgagee shall also be entitled to written notification from the Committee of any other default by its Owner/Mortgagor in the performance of such Owner's obligations under the term and provisions of this Declaration which shall not have been cured within thirty (30) days after written notice to such Owner/Mortgagor by the Committee specifying such default.

9.02 **Right to Examine.** A Mortgagee shall have the right to examine the books and records of the Association and Committee upon require annual reports of the financial status of the Association.

9.03 **Notice of Damage.** In the event of substantial damage to or destruction of any Unit of any part of the Common Areas, the Mortgagee of any Unit shall be entitled to timely written notice of any such damage or destruction. No Owner or other party shall be entitled to priority over such Mortgagee with respect to the distribution to such Unit of any insurance proceeds.

9.04 **Notice of Default.** Any 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 thirty (30) days.

9.05 **Effect of Foreclosure on Liens.** Each Mortgagee of a Unit who comes into possession of such Unit by virtue of foreclosure of its Mortgage, of by deed of assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any unpaid claims of assessment 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-rata share of such assessments or charges resulting from pro-rata reallocation of such assessments or all Units in the Project, including the mortgage Unit.

9.06 **General Mortgagee Protection.** Unless all of the Mortgagees 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 condemnation or eminent domain;

(b) Change the pro-rata interest of obligation of any Unit for (i) purpose of levying assessments or charges or allocation distributions of hazard insurance proceeds of condemnation awards or (ii) determining the percentage share of undivided ownership interest 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 of undivided ownership interest of the Unit owners in the Common Areas;

(d) By act of 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 the Section 9.06; 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 in Article VIII or by the Act in cases of substantial loss to the Units and/or the Common Areas of the Project.

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

ARTICLE X

BYLAWS MANAGEMENT COMMITTEE

10.01 **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 13.03 of this 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 authority to convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances has been obtained, including that of any Mortgagee if required by the terms of its Mortgage;

(f) The power and authority to purchase, or otherwise acquire, and accept title to, any interest in real property 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; and

(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 relation 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.

10.02 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.

10.03 Composition of Committee: Declarant Control. Until the happening of the first of the following two 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 twenty (120) days following the conveyance of title to Units representing ninety (90%) of the total outstanding Association votes; or
- (b) The expiration of three (3) 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 of or both of the aforesaid events by (i) giving notice to Unit Owners of such waiver, in written recordable form 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. 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 in 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

10.04 Management Committee: Owner Control, Composition, Election, Vacancies. Subject to the provisions of Section 10.03, above, the Committee shall be composed of four (4) members, two (2) to be elected to a three-year term and two (2) to a two-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 of officers, directors, agents or employees of non-individual Owners. 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 successors shall be elected for the unexpired term of the member they were appointed to replace. The Association, upon approval by the Owners, may increase the number of member on the Committee to five (5).

10.05 Rights and Duties. On behalf of the Association, the Management Committee, subject to the rights and duties of the Unit Owners, this Declaration, and the Bylaws, shall be responsible for the general management and administration of the Project, including the obligation to provide for maintenance of the Common Areas.

10.06 **Exterior Maintenance.** In connection with its duty to maintain Common Areas, the Committee will provide maintenance upon the exterior of the Buildings and Units, and the Common Area as follows: Paint, repair, replace, or otherwise care for as needed roofs, gutters, downspouts, exterior Building surfaces, trees, shrubs, grass, walks, driveways, parking areas, stairways and other exterior improvements except glass surfaces unless such surfaces are part of Common Areas.

10.07 **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.

10.08 **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 and function of 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.

10.09 **Personal Property Ownership and Use.** The Management Committee may acquire and hold for the use and the benefit of all 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.

10.10 **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 regulation shall be consistent with the rights and duties established in this Declaration. The Management Committee may suspend any Owner's voting rights at any meeting of Unit Owners or for periods during which such Owner fails to comply with such rules and regulation, or with any other obligations under this Declaration. The Management Committee may also take judicial action against any Owner to enforce compliance with such rules and regulation or other obligations or to obtain damages for noncompliance, all to the extent provided by law.

10.11 **Capital Improvements.** There shall be no structural alterations, capital additions to, or capital improvements of the Common Areas without the prior approval of the Unit Owners.

10.12 **Extended Rights.** The Management Committee may exercise any other right or privilege given to it expressly by this Declaration 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.

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

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

11.01 **Voting.** The Association shall have a total of one hundred (100) votes. The number of votes appurtenant to each Unit shall be as set forth in **Exhibit A** hereto. As used throughout this Declaration, the phrases "vote of the Owners", "approval of the Owners", "Owners vote", "consent of the Owners", or words of similar import, shall be deemed to require a majority of the total voting power of all Owners.

11.02 **Multiple Ownership.** In the event there is more than one Owner of a Particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the number of appurtenant votes, as reflected on **Exhibit A**, be cast for such Unit with respect to any issue. Votes cast at any Association meeting or by written consent by any of such Owner, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Unit concerned unless an objection is made at the meeting or in writing by another Owner of the same Unit, in which event no vote will be counted with respect to such Unit except to determine the absence of a quorum

11.03 **Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designed by the Management Committee in its notice.

11.04 **Annual Meetings.** Annual meetings of Members of the Association shall be held each year beginning in the year 2002 on such day and time as is set forth in the notice therefore; provided, that after the first such meeting, a month other than that in which the first annual meeting is held may be chosen if it is deemed by the Members to be more convenient. 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.

11.05 **Special Meetings.** The President shall call a special meeting of the Owners as directed by a resolution of the Management Committee or upon the request of Owner holding at least thirty percent (30%) of the total votes of the Association having been presented to the Committee. No business shall be transacted at a special meeting except as stated in the notice therefore unless consented to by the Owners, either in person or by proxy.

11.06 **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.

11.07 **Quorum.** Owners present at any meeting of Members duly called pursuant to notice shall constitute a quorum at all meeting, both annual and special; provided, however that such Members

Collectively be entitled to cast in person or by proxy at least a majority of the total Association votes eligible to be voted.

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

11.09 **Officers.** The Association shall have a President, a Vice President and a Secretary/Treasurer each of whom shall be elected by and from the Management Committee. 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.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all the meetings of the Association and of the Management Committee. He shall have all of the general powers and duties that are usually 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. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Committee.

(c) **Secretary/Treasurer.** The Secretary/Treasurer 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 of association. He 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 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

12.01 **Agreement to Pay Assessments.** Each Owner of a Unit, by the acceptance of a deed or contract therefore, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with all other Unit Owners and with the Management Committee to pay annual assessments for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. 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.

12.02 Basis of Assessments. All assessments shall be uniform in application. The total 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, including the Limited Common Areas and Facilities (even though these are not apportioned to all Units), 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 this Declaration.

12.03 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 the respective undivided ownership interests as set forth in Section 2.02, above (and in Exhibit A). **Any expenses attributable to Building Common Area shall be apportioned only to those Units to which such Building Common Area is exclusive and appurtenant in proportion to the square footage of each such Unit, and separately itemized in any notice.** For purposes of apportionment of expenses, Declarant shall be deemed to own only the undivided interest in the Common Areas and Facilities based upon Units which have been completed but not yet conveyed by Declarant to a purchaser.

12.04 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, 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 or quarterly payment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within fifteen (15) days after such date.

12.05 Initial Fees. In addition, each Owner shall be required to prepay at the time of Unit purchase, **whether as a first time or subsequent Owner**, a sum equal to **three times** the then monthly installment of the annual assessment apportioned to such Unit. Such fees shall become part of the Association's general fund to be utilized as necessary and shall be in addition to regular monthly installments or prorations thereof which shall commence as to an Owner when he becomes an Owner.

12.06 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 as determined and apportioned pursuant to Sections 12.02 and 12.03, above. The maximum annual assessment may, if deemed necessary by the Committee, 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.

12.07 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 10.11, 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 this Declaration, including any expenses attributable to Building Common Area. 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 or assessing for expenses authorized herein. Any amount assessed pursuant hereto shall be apportioned to Owners on the same basis set forth in Section 12.03, 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 eighteen percent (18%) per annum from the date it becomes due and payable of not paid within thirty (30) days after such date.

12.08 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, and 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 costs 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.

12.09 Release of Lien. A release of notice of lien shall be executed by the Management Committee and given to an Owner for recordation at such Owner's cost in the Office of the County Recorder of Utah County, Utah, upon payment of all sums owed and secured 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 pursuant to the provisions of 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. 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, or the lack thereof, within the Project.

12.12 **Information Concerning Unpaid Assessments.** Upon payment of a reasonable fee not to exceed Ten Dollars (\$10.00) 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.

ARTICLE XIII

GENERAL PROVISIONS

13.01 **Enforcement.** Each Unit Owner shall comply strictly with the provisions of this Declaration, the Bylaws, the administrative rules and regulations promulgated 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 proper case, by an aggrieved Unit Owner.

13.02 **Party Walls.** Each wall which is built as 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 of omissions shall apply hereto.

13.03 **Amendments.** Except as provided below, the vote of the Owners pursuant to Section 11.01, above, shall be required to amend this Declaration (including the Association Bylaws set forth herein). 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 ninety percent (90%) of the undivided ownership interest in the Project have been sold and conveyed by Declarant, Declarant alone shall have and is hereby vested with the right to effect such amendments and to execute and record an instrument of amendment.

13.04 **Consent Equivalent to Vote.** In those cases in which the Act or this Declaration requires the vote of a stated percentage or other ascertainable measure 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 singly or collectively hold at least the necessary percentage or other ascertainable measure of undivided ownership interest.

13.05 **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 inure to the benefit of Declarant, all parties who hereafter acquire any 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 a 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.

13.06 **Agent for Service of Process.** Jud Harward, whose address is 1988 West Center, Springville, UT 84663, 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 Utah. Such successor and his address shall be specified by an appropriate amendment filed in the Office of the Recorder of Utah County, Utah.

13.07 **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.

13.08 **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.

13.09 **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.

13.10 **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.

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

13.12 **Consents to Recordation.** Separate consents to the recordation of this Declaration and the Map by beneficiaries of any trust deeds encumbering the interests of Declarant or any Undivided Interest Owners of the Tract, will be recorded in connection with the recordation of the Map and this Declaration in the Office of the County Recorded of Utah County.

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

DECLARANT:

HOBBLE CREEK PROPERTIES LLC

By: Jud Harward
Jud Harward

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 24th day of OCT, 2002, by Jud Harward in the capacity indicated.

Roberta B. Anderson
NOTARY PUBLIC

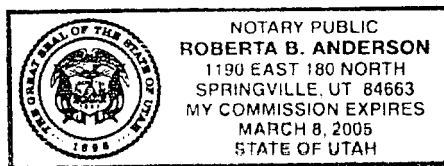


EXHIBIT A**DECLARATION OF CONDOMINIUM
(Including Bylaws)****BROOKSIDE CROSSING CONDMINIUM
Springville, Utah****UNITS, SIZE, UNDIVIDED PERCENTAGE OWNERSHIP INTERESTS, AND VOTES**

| Unit No. | Size (Sq. Ft.) (1) | Percentage (2) | Votes |
|-----------------|---------------------------|-----------------------|--------------|
| 1A | 5,012 SF | 15% | 17 |
| 1B | 5,012 SF | 15% | 17 |
| 2 | 10,024 SF | 30% | 33 |
| 3 | 13,180 SF | 40 % | 33 |
| Totals | 33,228 SF | 100% | 100 |

(1) Size based on the approximate number of square feet for floor space within each respective Unit as shown on the Map and rounded off, including under interior and exterior walls, as determined by LEI Engineers-Planners-Surveyors, Spanish Fork ,Utah.

(2) Percentages may be adjusted by one one-thousandth of a percentage point in order to provide for a total of one hundred percent. (100%)