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SHERYL L. WHITE, DAVIS CNTY RECORDER  
1999 APR 7 11:00 AM FEE 143.00 DEP D.J.W  
REC'D FOR WILLOW BEND INC

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS FOR  
SPRING CREEK

A PLANNED RESIDENTIAL

Lot 1 thru 50 + Common UNIT DEVELOPMENT

Spring Creek PRUD <sup>0.43</sup>  
09-284-0001 thru 0051 \*\*\*\*\*

THIS DECLARATION, made this 2<sup>nd</sup> day of April 1999,  
By Willow Bend Inc., A Utah Corporation, Declarant:

R E C I T A L S :

A. Declarant is the owner of certain property in the County of Davis, State of Utah, which is more particularly described as follows:

PART OF THE SOUTHWEST QUARTER OF SECTION 8, T4N, R1W, SLB&M;  
SPRING CREEK PRUD (ALL OF PARCEL 3 ROBINS ESTATES), DESCRIBED AS FOLLOWS  
BEGINNING AT A POINT ON THE EAST LINE OF 1200 WEST (ANGEL STREET)  
SAID POINT BEING N00°09'57"E 1,580.63 FEET AND N89°55'23"E 33.00 FEET  
FROM THE SOUTHWEST CORNER OF SECTION 8, T4N, R1W, SLB&M,  
THENCE ALONG SAID EAST LINE OF 1200 WEST STREET

N00°09'57"E	400.21 FEET; THENCE
N89°55'23"E	718.66 FEET; THENCE
S00°09'57"W	660.26 FEET; THENCE
S89°55'23"W	527.40 FEET; THENCE
N00°09'57"E	260.05 FEET; THENCE
S89°55'23"W	191.26 FEET TO THE POINT OF BEGINNING.

CONTAINS: 424,762 SQ FT 9.751 ACRES.

BASIS OF BEARING: N89°55'10"E FROM THE SOUTHWEST CORNER OF SECTION 8  
TO THE SOUTH QUARTER CORNER OF SAID SECTION.

B. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the real property described above ("Properties"), to create a non-profit corporation under the Utah Non-Profit Corporation and Cooperative Association Act to which should be delegated and assigned the powers of owning, maintaining and administering the Common Area and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created, which said corporation is sometimes hereafter referred to as the Association.

C. Declarant's affiliate has caused such corporation to be created, the members of which shall be the respective Owners of Lots.

D. Declarant will develop and convey all of the Properties, as hereinafter defined, pursuant to a general plan for all of the Properties and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Properties as hereinafter set forth.

The Properties shall be subdivided into 50 lots and common area.

Each Owner of the Lots shall be members of the Association. Upon the elimination of the Class B Membership as provided at Article IV of the Bylaws, each of the Lots shall have one (1) vote in the Association. The common obligations shall be distributed in like percentages.

E. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved, subject to the following easements,

restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest and each Owner and his respective successors in interest; and may be enforced by any Owner and his successors in interest and by the Association.

Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Declarant's rights to complete development of the Properties and construction of improvements therein, nor Declarant's rights to maintain model homes, construction, sales or leasing offices or similar facilities on any property in the Properties owned by Declarant or the Association, nor Declarant's right to post signs incidental to construction, sales or leasing.

## ARTICLE I

### Definitions

Unless otherwise expressly provided, the following words and phrases, when used herein, shall have the meaning hereinafter specified:

Section 1. "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof.

Section 2. "Articles" shall mean the Articles of Incorporation of the Association which have been filed in the office of the Utah Department of Commerce, Division of Corporations, and as such Articles may be amended, from time to time.

**Section 3. "Assessment"** shall mean the charge against a particular Owner and his Lot, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Properties.

**Section 4. "Association"** shall mean SPRING CREEK OWNERS' ASSOCIATION, an Association formed under the Utah Non-Profit Corporation and Cooperative Association Act, its successors and assigns.

**Section 5. "Beneficiary"** shall mean mortgagee under a mortgage or a beneficiary or holder under a Deed of Trust, as the case may be and the assignees of such mortgagee, beneficiary or holder.

**Section 6. "Board of Trustees"** shall mean the Board of Trustees of the Association, elected in accordance with the Bylaws of the Association.

**Section 7. "Bylaws"** shall mean the Bylaws of the Association which have been or shall be adopted by the Board of Trustees, and as such Bylaws may be amended, from time to time.

**Section 8. "Capital Improvement Assessment"** shall mean a charge against each Owner and his Lot representing a portion of the costs to the Association for installation or construction of any improvements on any portion of the Common Area which the Association may, from time to time, authorize.

**Section 9. "Common Area"** shall mean all the real property and improvements, including without limitation, any landscaped areas, walkways, water and sanitary storm sewer facilities, fences, picnic area and easements and rights-of-way appurtenant to the Properties which are owned by the Association for the common use and enjoyment of the Owners of Lots. The Common Area to be so owned by the Association at the time of the conveyance of the first Lot shall also include the following described property located in the County of Davis, State of Utah:

Part of parcel 3 of the Robins Estates Subdivision, described as follows: Beginning at a point on the East line of 1200 West (Angel Street), said point being North 00 degrees 09'57" West and 1,580.63 feet and

North 89 degrees 55'23" East 33.00 feet from the Southwest Corner of Section 8, Township 4 North, Range 1 West, Salt Lake Base and Meridian; thence along said street North 00 degrees 09'58" East 400.35 feet; thence North 89 degrees 55'24" East 296.02 feet; thence South 00 degrees 21'44" East 113.12 feet; thence South 30 degrees 52'53" West 72.38 feet; thence South 01 degree 53'32" West 151.46 feet; thence South 34 degrees 06'45" West 59.30 feet; thence South 51 degrees 34'34" West 39.86 feet; thence South 89 degrees 55'23" West 191.26 feet to the point of beginning. Basis of bearing: North 89 degrees 55'10" East from said Southwest Corner of Section 8 to the South Quarter Corner of said Section

Together with all easements and rights-of-way appurtenant thereunto. EXCLUDING, HOWEVER, Lots 1 through 12, inclusive, SPRING CREEK, a Planned Residential Unit Development, together with a perpetual easement for the encroachment of the eaves of the buildings. Provided, however, the exclusive use of the driveways are reserved for the use of the Lot to which it is appurtenant.

Section 10. "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area (including unpaid special assessments, reconstruction assessments and capital improvement assessments), including those costs not paid by the Owner responsible for payment, costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to manager, accountants, attorneys and other employees, the costs of all utilities, gardening and other services benefiting the Common Area and all recreational facilities thereon; the costs of fire, casualty and liability insurance, workmen's compensation insurance and other insurance covering the Properties and the costs of bonding of the members

of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties or portions thereof; and the costs of any other item or items designated by or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners of Lots.

Section 11. "Declarant" shall mean and refer to WILLOW BEND INC., A UTAH CORPORATION, its successors and assigns, so long as Declarant assigns such rights of Declarant hereunder to any person by an express written assignment.

Section 12. "Declaration" shall mean and refer to this instrument as it may be amended from time to time.

Section 13. "Deed of Trust" shall mean and refer to a mortgage or a Deed of Trust, as the case may be.

Section 14. "Dwelling Unit" shall mean and refer to a building located on a Lot designed and intended for the use and occupancy as a residence by a single family.

Section 15. "Family" shall mean: (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not all so related, inclusive of their domestic servants, who maintain a common household in a residence on a Lot.

Section 16. "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, out buildings, walk-ways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

Section 17. "Lot" shall mean and refer to any residential Lot or parcel of land shown upon any recorded subdivision plat of SPRING CREEK, with the exception of the Common Area.

**Section 18. "Maintenance Funds"** shall mean the accounts created for the receipts and disbursements of the Association pursuant to Article VI hereof.

**Section 19. "Manager"** shall mean the person, firm or corporation appointed by the Association hereunder as its agents and delegated certain duties, powers or functions of the Association.

**Section 20. "Member"** shall mean any person or entity holding a membership in the Association as provided herein.

**Section 21. "Mortgage", "Mortgages"** shall mean any mortgage or Deed of Trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein, shall be synonymous with the term "Mortgage". The term "Mortgagee" shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a Deed of Trust; "Mortgagor" shall mean a person or entity who mortgages his or its property to another (i.e., the maker of a mortgage) and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgagee".

**Section 22. "Notice and Hearing"** shall mean written notice and a public hearing before a Tribunal appointed by the Board of Trustees at which the Owner concerned shall have opportunity to be heard in person or by counsel at Owner's expense, in the manner further provided in the Bylaws.

**Section 23. "Owner"** shall mean and refer to a the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot which is part of the Properties, including sellers under executory contract of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article X only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and lessees of any Owner.

**Section 24. "Person"** shall mean a natural individual to any other entity with the legal right to hold title to real property.

**Section 25. "Properties"** shall mean and refer to all of the real property described in paragraph A of the Recitals to this Declaration.

**Section 26. "Reconstructive Assessment"** shall mean a charge against each Owner and his Lot representing a portion or portions of the improvements on the Common Area pursuant to the provisions of this Declaration.

**Section 27. "Record, Recorded, Filed and Recordation"** shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of the County of Davis, State of Utah.

**Section 28. "Special Assessments"** shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

**Section 29. "Subdivision"** shall mean a parcel of real property which has been divided or separated into Lots, shown on a recorded subdivision map, pursuant to law and the provisions of Chapter \_\_\_ of the Zoning Ordinances of Layton City.

## ARTICLE II

### Owner's Property Rights

**Section 1. Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area which shall be appurtenant to and shall pass with title to every Lot and unit, subject to the following provisions:

- (a) The right of Declarant to annex additional Common Area thereto pursuant to the terms of Article XV.
- (b) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities.



(c) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereof, including but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Area as set forth in Section 3 of Article II herein.

(d) The right of the Association to charge uniform and reasonable admission and other fees for the use of the recreational facilities, if any, situated upon a portion of the Common Area; provided, however, that none of the Common Area facilities, recreational facilities, parking spaces or other amenities in the Properties shall be leased to the Owners.

(e) The right of the Association, in accordance with its Articles of Incorporation, Bylaws, and this Declaration, with the vote of or written assent of two-thirds (2/3rds) of each class of members (excluding therefrom the voting power of the Declarant), to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, and subject to the provisions of Article XIV of this Declaration, to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the rights of the Owners.

(f) The right of the Association to suspend the voting rights and right to use the Common Area facilities by an owner for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or right to use the Common Area facilities shall be made only by the Board of Trustees of the Association, after notice and an opportunity for a hearing as provided in the Bylaws of the Association.

(g) Subject to the provisions of Article XIV of this Declaration, the Association shall have the right to dedicate, release, alienate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be

effective unless an instrument signed by Members entitled to cast two-thirds (2/3rds) of the voting power of the Class A Members (excluding the voting power of the Declarant), agreeing to such dedication, release, alienation, or transfer has been recorded.

(h) The right of the Declarant (and its sales agents, customers, and representatives) to the non-exclusive use of the Common Area and the facilities thereof, without charge, for sales, display, access, ingress, egress and exhibit purposes, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than five (5) years after the date of recording of this Declaration. Upon the request of Declarant and upon the vote of fifty-one percent (51%) of the Class A Members, this term may be extended for an additional period of time.

(i) The right of the Association (by action of the Board of Trustees) to reconstruct, replace or refinish any improvement or portion thereof upon the Common Area, in accordance with the original design, finish or standard of construction of such improvements, or of the general improvements within the Properties, as the case may be; and not in accordance with such original design, finish or standard of construction only with the vote or written consent of the Owners holding seventy-five percent (75%) of the voting power of the Association.

(j) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area.

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside in his dwelling unit, subject to reasonable regulation by the Board of Trustees.

**Section 3. Easements for Parking.** The Association, through its officers, committees and agents, is hereby empowered to establish "parking" and "no parking" areas within the Common Area, as well as to enforce these parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those so empowered.

**Section 4. Easements for City and County Use.** In addition to the foregoing easements over the Common Area, there shall be, and Declarant hereby reserves and covenants for itself and all future Owners, easements for city, county and federal public services, including but not limited to, the right of the police to enter upon any part of the Common Area for the purpose of enforcing the laws and permanent easement in favor of Layton City pursuant to the ordinances of the city of Layton to guarantee that the open spaces remain perpetually in the uses for which intended.

**Section 5. Waiver of Use.** No Owner may exempt himself from personal liability for assessments duly levied by the Association nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon, or by abandonment of his Lot or any other property in the Properties.

**Section 6. Title to the Common Area.** The Declarant hereby covenants, for itself, its successors and assigns, that it will convey fee simple title to the Common Area described in Article I, Section 11 of this Declaration to the Association, free and clear of all encumbrances and liens, except easements, conditions and reservations set forth in this Declaration. Said conveyance shall be made prior to the conveyance of the first Lot to a purchaser from Declarant. Declarant shall similarly convey the Common Area of any property annexed hereto.

**Section 7. Taxes.** Each Owner shall execute such instruments and take such action as may be reasonably specified by the Association to obtain separate real estate tax assessments on each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership or any part thereof, they may be paid by the Association and each owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against his own Lot and interest, if any, in the Common Area.

**Section 8. Real Property Taxes.** The payment of real property taxes assessed against the Common Area is the responsibility of the Association. Provided, however, if for any reason the same are not timely paid, the payment of the taxes shall be the

responsibility of and assessed against the Owners of the Lots, on a prorata basis.

### ARTICLE III

#### Membership in the Association

**Section 1. Membership.** Every Owner of a Lot shall be a member of the Association. Memberships in the Association shall not be assignable, except to the successor in interest of the Member, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot.

**Section 2. Transfer.** The Association membership held by any Owner of a Lot shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Lot and then only to the purchaser or mortgagee of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board of Trustees before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee simple title to the Lot sold is transferred. In the event the Owner of any Lot shall fail or refuse to transfer the membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Trustees shall have the right to record the transfer upon the books of the Association. The Board of Trustees shall have the right to charge a reasonable Special Assessment against any Owner and his Lot, equal to the cost to the Association of effectuating any such transfer of his membership upon the books of the Association.

## ARTICLE IV

### Voting Rights

Section 1. Classes of Voting Membership. The Association shall have two (2) classes of voting membership respecting the PRUD Lots, as follows:

Class A. Class A Members shall originally be all Owners, with the exception of the Declarant, for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for such Lot owned. Declarant shall become a Class A Member with regard to Lots owned by Declarant upon conversion of Declarant's Class B Membership as provided below. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised in accordance with Article IV, Section 2 of this Declaration and in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. Class B Membership shall be the Declarant and it shall be entitled to three (3) votes for each Lot owned by it. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earliest:

(a) When the total votes outstanding in the Class A Membership, inclusive of votes attributable to any property annexed to the Properties, equals the total votes outstanding in the Class B Membership; or

(b) Three (3) years from the date of recording this Declaration; or

(c) On voluntary cancellation of the Class B Membership by Declarant.

Section 2. Vote Distribution. Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot ("co-owner"), all such co-owners shall be Members and may attend any meeting of the Association,

but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may, from time to time, designate in writing one of their number to vote. Fractional votes shall not be allowed and the Class A vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board of Trustees receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the Bylaws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association.

## **ARTICLE V**

### **Duties and Powers of the Association**

The Association, acting through the Board of Trustees, shall also have the power and duty to:

- (a) Maintain, repair and otherwise manage the Common Area and all facilities, improvements and landscaping thereon in accordance with the provisions of Article VI of this Declaration.
- (b) Maintain all private streets within the Properties, including cleaning and periodic resurfacing.
- (c) Maintain all private sewer systems within the Common Area.

(d) Pick up and dispose of garbage, or arrange for the pick up and disposal of garbage by public agencies, or contract for the pick up and disposal of garbage by contract with private agencies.

(e) Grant easements, rights-of-way or strips of land, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.

(f) Maintain such policy or policies of liability and fire insurance with respect to the Common Area and personal property, if any, owned by the Association as provided herein in furthering the purposes of and protecting the interests of the Association and Members and as directed by this Declaration and the Bylaws of the Association.

(g) Employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association and shall have the power to delegate its powers to committees, officers and employees. Any such agreement shall be for a term of not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days or less written notice.

(h) After fifteen (15) days' written notice, without being liable to any Owner, enter upon any Lot for the purpose of enforcing, by peaceful means, the provisions of this Declaration or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration, all at the cost and expense of the Lot Owner, which said cost and expense shall be a lien upon said Owner's Lot.

(i) From time to time promulgate rules and regulations which shall be binding upon the Owners of the Lots.

(j) Do and perform any and all things as may be convenient or necessary in connection with the Properties.

## ARTICLE VI

*Covenants for Maintenance Assessments*

**Section 1. Creation of the Lien and Personal Obligations of Assessments.** Declarant, for each Lot owned by it within the Properties, hereby covenants and each owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments for common expenses; (2) capital improvement assessments; (3) special assessments; and (4) reconstruction assessments; such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Subject to provisions of this Declaration protecting first mortgagees, the personal obligation for delinquent assessments shall pass to the successors in interest of such Owner. The Board of Trustees shall establish no fewer than two (2) such separate accounts ("Spring Creek Maintenance Funds") into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. Each of the Maintenance Funds shall include: (1) an Operating Fund for current expenses of the Association; and (2) a Common Area Reserve Fund for replacements, painting and repairs (which would not reasonably be expected to recur on an annual or less frequent basis) of the Common Area facilities to the extent necessary under the provisions of this Declaration. The Board of Trustees shall not co-mingle any amounts deposited into any of Spring Creek Maintenance Funds with one another.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvements and maintenance of the Common Area, exterior maintenance, drainage system, storm drain system and of the



dwelling units situated upon the Lots in the Properties as provided herein.

The Association shall be responsible for the exclusive management, control and maintenance of the sub-surface drainage system serving the Properties. The annual assessment shall include the amount sufficient to cover on-site and off-site maintenance of the sub-drain system and relocated parts thereof serving the Properties. The sub-surface drainage system assessments shall be assessed for those portions of the sub-surface drainage system serving the Properties which are located in public streets or dedicated public rights-of-way (provided, however, each Lot Owner shall be solely responsible for maintenance of the sub-surface drainage facilities or beneath said Lot Owner's Lot).

The assessments shall also be for an adequate reserve to be used as appropriate for maintenance, repairs and replacement of those elements of the common property and exterior maintenance that must be replaced on a periodic basis. However, disbursements from the Common Area Reserve Fund shall be made by the Board of Trustees only for the specific purpose specified in this Article VI. Disbursements from the Operating Fund shall be made by the Board of Trustees for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Common Area Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Spring Creek Maintenance Funds by the Association, so long as the amounts deposited into any such fund are earmarked for specified purposes authorized by this Declaration.

Section 3. Damage to Common Area by Owners. The foregoing maintenance, repairs or replacements within the Common Area arising out of or caused by the wilful or negligent act of the Owner, his family, guests or invitees, shall be done at said Owner's expense or a Special Assessment therefor shall be made against his Lot; provided, however, that the liability of an individual Owner for such damage to the Common Area shall not be

absolute, but shall only be that for which the Owner is legally responsible under state law.

Section 4. Maximum Annual Assessment. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be ONE THOUSAND (\$1,000.00) DOLLARS per Lot.

(a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of a majority of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Trustees may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Capital Improvement and Reconstruction Assessments. In addition to the Assessments authorized above, the Board of Trustees may levy, in any assessment year, a Capital improvement Assessment or Reconstruction Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement or other such addition upon the Common Area, including fixtures and personal property related thereto; provided, however that any such total assessment in excess of TWO THOUSAND (\$2,000.00) DOLLARS shall have the vote or written assent of a majority of the votes of Members who are subject to such assessment, excluding the votes of Declarant.

Section 6. Notice of Quorum for any Authorizing under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 4 and 5 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of

all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notification requirement and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

**Section 7. Uniform Rate of Assessment.** Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at a uniform rate for all Lots within the Properties; provided, however, that the Association may, subject to the provisions of Section 3 of this Article, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to wilful or negligent acts of said Owners, their guests or agents. All Assessments shall be collected on a regular basis by the Board of Trustees, at such frequency as the Board of Trustees shall determine.

**Section 8. Date of Commencement of Assessments: Due Date.** The annual assessment shall commence six (6) months after commencement of construction of the improvements as to the property of each plat. The first annual Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board of Trustees shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each Assessment period. Written notice of any change in the amount of the annual Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board of Trustees. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

The Board of Trustees shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Common Area Reserve Fund and

the Operating Fund, and shall cause to be distributed a copy of each such statement to each Member, and to each first mortgagee who has filed a written request for copies of the same with the Board of Trustees, in the manner provided in the Bylaws of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board of Trustees shall prepare and distribute to the Membership of the Association, a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Common Area Reserve Fund, less any expected income and accounting for any surplus from the prior year's respective Spring Creek Maintenance Fund).

Each annual Assessment shall constitute an aggregate of separate assessments for each of the maintenance Funds reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Common Area Reserve Fund, the Operating Fund and any other maintenance fund established by the Association. If the estimated sums prove inadequate for any reason, including non-payment of any Owner's annual Assessment, the Board of Trustees may, at any time, levy supplemental Assessments subject to provisions of Section 4 of this Article, for any of the Maintenance Funds which shall be assessed equally against the Owner of each Lot in the Properties.

Each annual Assessment may be paid by the Owner to the Association in one check or payment or in separate checks, as payments attributable to deposits into specified maintenance funds. In the event that any installment of an Assessment payment is less than the amount assessed and the payment does not specify the maintenance fund or funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in order of priority, first to the Operating Fund, until that portion of the Assessment has been satisfied and second, to the Common Area Reserve Fund.

At the end of any fiscal year of the Association, the Owners may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Properties, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Assessments. Notwithstanding anything contained

in the Articles or Bylaws to the contrary, if prior to dissolution of the Association, the Association has not obtained tax exempt status from both the Federal and State governments, then upon such dissolution of the Association, any amounts remaining in the Common Area Reserve Fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

**Section 2. Exempt Property.** The following property, subject to this Declaration, shall be exempt from the assessment herein:

- (a) All properties dedicated to and accepted by a local public authority; and
- (b) The Common Area.

## ARTICLE VII

### **Effect of Non-Payment of Assessments; Remedies of The Association**

**Section 1. Effect of Non-Payment of Assessments; Remedies of The Association.** Any installment of an Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be required further by the Board of Trustees to pay a late charge of FIFTEEN (\$15.00) DOLLARS or ten percent (10%) of the amount of the delinquent installment, whichever is greater. The Association may bring an action at law against the Owner, personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board of Trustees shall mail an acceleration notice to the Owner and to each first mortgagee of a Lot which has requested a copy of the notice. The notice shall specify: (1) the fact that the installment is delinquent; (2) the action required to cure the default; (3) a date, not less than

thirty (30) days from the date the notice is mailed to the Owner by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Assessment for the then current fiscal year and sale of his Lot. The notice shall further inform the Owner of his right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board of Trustees, at its option, may declare all of the unpaid balance payable without further demand and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law and this Declaration.

**Section 2. Notice of Assessment.** No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a Notice of Assessment is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Properties are located; said Notice of Assessment must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment at eighteen percent (18%) per annum plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien) and the name and address of the claimant. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association and said lien shall be prior to any Declaration of Homestead recorded after the date on which this Declaration is recorded. The lien shall continue until fully paid or otherwise satisfied.

**Section 3. Foreclosure Sale.** Any such sale provided for above may be conducted by the Board of Trustees, its attorneys or other persons authorized by the Board of Trustees in accordance with the provisions of the Utah Code Annotated, 1953 as amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power

to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

**Section 4. Curing of Default.** Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed SEVENTY FIVE (\$75.00) DOLLARS to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board of Trustees stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed FIFTEEN (\$15.00) DOLLARS.

**Section 5. Cumulative Remedies.** The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

**Section 6. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (meaning any recorded mortgage with first priority or seniority over mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or deed in lieu thereof, shall extinguish the lien of such assessments as to installments which became due prior to such sale or transfer. However, no sale or transfer shall relieve such Lot from liability for any installments of assessments thereafter becoming due or from the lien thereof.

**ARTICLE VIII****Architectural Control**

**Section 1. Members of Committee.** The Architectural Committee, sometimes referred to in this Declaration as the "Committee" shall consist of three (3) members. The initial members of the Committee shall consist of representatives of Declarant. Each of said persons shall hold office until the election of the first Board of Trustees by the membership of the Association. Thereafter, new members of the Committee shall be appointed by the Board of Trustees and shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause. The Board of Trustees shall have the right to appoint and remove all members of the Committee.

**Section 2. Review of Proposed Construction.** Subject to Article X, Section 12 of this Declaration and the Development Guide, no building, fence, wall, patio cover or other structure shall be commenced, painted, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and color and location in relation to surrounding structures and topography by the Architectural Committee. The Committee shall approve proposals of plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole; that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The Committee may condition its approval of proposals of plans and specifications upon such changes therein as it deems appropriate, upon the agreement by the Owner submitting the same to grant appropriate easements to the Association or the cost of maintenance, or all three, and may require submission of additional plans and specifications or



other information prior to approving or disapproving material submitted. The Committee may also issue rules or guide lines setting forth procedures for the submission of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee may provide that the amount of such fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated, provided that in no event shall such fee exceed FIVE HUNDRED (\$500.00) DOLLARS. The Committee may require such detail in plans and specifications submitted for its review as it deems necessary and proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior materials and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval. Such construction is also subject to the approval of the City of Layton.

Section 3. Meetings of the Committee. The Committee shall meet, from time to time, as necessary to perform its duties hereunder and shall complete its review and report of proposed construction within thirty (30) days after submittal of a request. The Committee may, from time to time, by resolution, unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8 hereof. In the absence of such designation, the vote of any two (2) members of the Committee taken without a meeting shall constitute an act of the Committee.

Section 4. No Waiver of Future Approvals. The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

Section 5. Compensation of Members. The architect and landscape architect members of the Committee may be paid for their services and necessary expenses. The other members of the Committee shall receive no compensation for services rendered, but shall be reimbursed for expenses incurred by them in the performance of their duties hereunder.

Section 6. Inspection of Work. Inspection of work and correcting of defects therein shall proceed as follows:

(a) Upon the completion of any work for which approved plans are required under this Article VIII, the Owner shall give written notice of completion to the Committee.

(b) Within sixty (60) days thereafter, the Committee, or its duly authorized representative, may inspect such improvement. If the Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner, in writing, of such non-compliance within such sixty (60) day period, specifying the particulars of non-compliance and shall require the Owner to remedy the same.

(c) If, upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such non-compliance, the Committee shall notify the Board of Trustees, in writing, of such failure. Upon notice and hearing, the Board of Trustees shall determine whether there is a non-compliance and if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board of Trustees ruling within such period. The Board of Trustees, at its option, may either remove the non-complying improvement or remedy the non-compliance and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board of Trustees shall levy a Special Assessment against such Owner for reimbursement.

(d) If, for any reason the Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of the said written notice of completion from the Owner, the

improvement shall be deemed to be in accordance with said approved plans.

**Section 7. Non-Liability of Committee Members.** Neither the Committee nor any member thereof, nor its duly authorized Committee representative shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the wilful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing nor shall its approval of any plans or designs be deemed approval of any plans or designs from the standpoint of structural safety or conformance with buildings or other codes.

**Section 8. Variance.** The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing and must be signed by at least two (2) members of the Board of Adjustment of Davis County. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to, zoning ordinances and lot

set back lines or requirements imposed by any governmental or municipal authority.

## **ARTICLE IX**

### **Maintenance and Repair Obligations**

**Section 1. Structural Maintenance Areas.** No improvement, excavation or work which in any way alters the Structural Maintenance Areas from their natural or existing state on the date any such area is conveyed by Declarant to a purchaser of a Lot shall be made or done by any person other than the Association or its authorized agents. The Association shall maintain or provide for the maintenance in good order and repair and shall reconstruct, replace or refinish the improvements within the Structural Maintenance Areas.

**Section 2. Exterior Maintenance.** In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replacement and care of roofs, gutters, down-spouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the wilful or negligent acts of its Owner, or through the wilful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

**Section 3. Maintenance Obligation of Association.** Subject to the provisions of Section 2 of this Article, the Association shall maintain or provide for the maintenance, of all Common Areas and all improvements thereon, including fences, entrance gates, streets, sidewalks, Common Area landscaping, landscaping equipment and lighting and utility mains, and any and all utility laterals to the lot lines.

**Section 4. Damage and Destruction Affecting Residences -- Duty to Rebuild.** If all of or any portion of any Lot or dwelling unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or dwelling unit to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

**Section 5. Variance in Exterior Appearance and Design.** Any Owner who has suffered damage may apply for approval to the Architectural Committee for reconstruction, rebuilding or repair of his residence in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing, together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Committee shall grant such approval only if the design proposed by the Owner should result in a finished residence as in harmony with exterior design of other residences on the Properties. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes, shall constitute approval thereof. If the obligation for repair falls upon the Association, Architectural Committee approval will not be required prior to the commencement of such work. Such variance and construction is also subject to the approval of Layton City.

**Section 6. Time Limitation.** The Owner or Owners of any damaged residence, the Association and the Architectural Committee shall be obligated to proceed with all due diligence hereunder and the responsible party shall commence reconstruction within six (6) months after the damage occurs, unless prevented by causes beyond their reasonable control.

## ARTICLE X

### Use Restrictions

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and

restrictions, subject to the exemption of Declarant in Section 12 hereof:

**Section 1. Single Family Residence.** Subject to Section 3 of this Article X, each Lot shall be used as a residence for a single family residence and for no other purpose.

**Section 2. Business or Commercial Activity.** Subject to Section 3 of this Article X, no part of the Properties shall ever be used or caused to be used or allowed or authorized, in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes; except Declarant, its successors or assigns, may use any portion of the Properties for a model home and sales period in accordance with Article II, Section 1(h) of this Declaration, and excepting professional and administrative occupations without external evidence thereof, for so long as such occupations are in conformance with Layton City ordinances and are merely incidental to the use of the dwelling unit as a residential home.

**Section 3. Real Estate Business.** No dwelling unit, Lot, improvement or portion of the Common Area shall be used in the conduct of any real estate business, gainful occupation, profession, trade office or other non-residential activity; provided, however, that Declarant, or its designees, shall have the non-exclusive right, subject to the provisions of Article II, Section 1(h) of this Declaration, to use, without additional cost, the portions of any recreational building constructed on the Common Area for purposes of sales of lots within the Properties, provided that such use does not unreasonably interfere with the use of any recreational facilities by members of the Association. Furthermore, as to any Lots owned by Declarant, Declarant shall have the unrestricted right to maintain model homes thereon for sales purposes.

**Section 4. Nuisances.** No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Properties and the Board of Trustees shall have the right to determine, in accordance with

the Bylaws, if any noise, odor or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smokey vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Owner in the Properties, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.

Section 5. Signs. No sign, poster, display, billboard, or other advertising device of any kind shall be displayed to the public view on any portion of the Properties or any Lot, without the prior written consent of the Architectural Committee, except for one sign for each dwelling unit of not more than two (2) feet by two (2) feet, plain white or black block letters, advertising the property for sale or rent, or except signs, regardless of size, used by Declarant, its successors or assigns, to advertise the Properties during construction and sales periods. All signs or billboards and the condition promulgated for the regulation thereof shall conform to the requirements of the Layton City Ordinances.

Section 6. Parking and Vehicular Restrictions. No Owner of any Lot shall park, store or keep any vehicle except wholly within the parking area designated therefor and any inoperable vehicle shall be stored only in garages. No Owner shall park, store or keep on any property or street (public or private) within the Properties, any camper type or small truck, large commercial type vehicle (dump truck, cement mixer truck, delivery truck and any other vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board of Trustees), any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle) upon any uncovered parking space, so as to be visible from anywhere in the Properties, except as otherwise provided by the Board of Trustees. The above excludes campers or small trucks up to and including three quarter ton (3/4) when used for every day type transportation, which may be parked in a driveway or garage. No Owner of a Lot shall conduct major repairs or major restoration of any motor vehicle, boat, trailer, aircraft or other vehicle

upon any portion of any Lot or upon the Common Area. Provided, however, recreational vehicles may be temporarily parked, from time to time, for periods not to exceed forty-eight (48) hours for purposes of loading, unloading and cleaning.

**Section 7. Animal Restrictions.** No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area, except usual and ordinary dogs, cats, fish, birds and other household pets may be kept on Lots, subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Association (or the Architectural Committee or such other person or entity as the Association may, from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Trustees, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board of Trustees, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed patio or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Architectural Committee. Should any animal belonging to an Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it owns any interest in the Properties) or a person designated by the Declarant to do so, to a shelter under the jurisdiction of the local municipality in which the Properties are situated and subject to the laws and rules governing said shelter, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animal brought or kept upon the Properties by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animal which have used any portion of the Common Area.



**Section 8. Trash.** No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Properties, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor and fire pits in the patios designed in such a manner that they do not create a fire hazard. No clothing or household fabrics shall be hung, dried or aired in such a way in the Properties as to be visible to other property and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Properties except within an enclosed structure or appropriately screened from view.

**Section 9. View Obstructions.** Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction by Declarant may impair the view of such Owner and hereby consents to such impairment.

**Section 10. Temporary Buildings.** No outbuilding, basement, tent, shack, shed or other temporary building or improvement of any kind shall be placed upon any portion of the Properties, either temporarily or permanently. No garage, trailer, camper, motor home or recreational vehicle shall be used as a residence in the Properties, either temporarily or permanently.

**Section 11. Common Area Facilities.** Nothing shall be altered or constructed in or removed from the Common Area except upon written consent of the Association.

**Section 12. Declarant Exemption.** Declarant or its successors or assigns will undertake the work of constructing dwelling units and developing all of the Lots included within the Properties and any annexation thereto. The completion of that work and sale, rental and other disposal of dwelling units is essential to the establishment and welfare of said property as a residential community. As used in this Section and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of Lots improved with completed dwelling units. In

order that said work may be completed and the Properties established as a fully occupied residential community as rapidly as possible, no Owner nor the Association shall do anything to interfere with and nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing, on any Lot owned by them, whatever they determine to be necessary or advisable in connection with the completion of said work, including, without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining, on any Lot or portion thereof, owned or controlled by Declarant or its successors or assigns or its or their representatives or their contractors or subcontractors, such structures as may be reasonable necessary for the conduct of its or their business of completing said work and establishing the Properties as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

(c) Prevent Declarant, its successor or assigns, or its or their contractors or subcontractors, from constructing on any Lot or any portion thereof, owned or controlled by Declarant, or its successors or assigns, its or their business of developing, subdividing, grading and constructing dwelling units and other improvements on the Properties as a residential community and of disposing of dwelling units thereon by sale, lease or otherwise; or

(d) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sign or signs on any Lot owned or controlled by any of them as may be necessary in connection with the sale, lease or other marketing of Lots and dwelling units in the Properties; or

(e) Prevent Declarant, at any time prior to acquisition of title to a Lot in a subdivision by a purchaser from Declarant, to establish on that subdivision additional licenses, reservations and rights-of-way to itself, to utility companies or to others as

may, from time to time, be reasonably necessary to the proper development and disposal of the Properties.

**Section 13. Outside Installation.** No radio station or shortwave operators of any kind shall operate from any Lot or dwelling unit unless approved by the Board of Trustees. Exterior radio antenna, television antenna or other antenna may be erected or maintained in the Properties, subject to the approval of the Architectural Committee.

**Section 14. Insurance Rates.** Nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the Association without the approval of the Board of Trustees nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any laws.

**Section 15. Drilling.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred (500') feet below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

**Section 16. Further Subdivision.** No Owner shall further partition or subdivide his Lot; provided, however, that this provision shall not be construed to limit the right of an Owner to: (a) rent or lease all or any portion of his Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) sell his Lot; or (3) transfer or sell any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be subject, in all respects, to the provisions of this Declaration and Bylaws of the Association and any failure by the Lessee of such Lot to comply with the terms of this Declaration or the Bylaws of the Association shall constitute a default under the lease.

**Section 17. Drainage.** There shall be no interference with the established drainage pattern within the Properties. In this connection, no irrigation water, or water from any roof or eaves of any building or from any other source shall be permitted to discharge and spread upon the surface of any sidewalk, street or Common Area.

**Section 18. Water Supply Systems.** No individual water supply, sewage disposal system or water softener system shall be permitted on any Lot in the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Layton City Water Department, the Architectural Committee and all other applicable governmental authorities.

**Section 19. Lease by Declarant.** The Declarant is authorized to lease to tenants, not more than thirty percent (30%) of the Lots upon which residential units have been constructed thereon owned by it.

## ARTICLE XI

### Fences

There shall be no fences or walls within or on the Properties except the fence and/or wall around the perimeter of the Properties and except party walls. Provided, however, Declarant may provide privacy screening between the Lots. Such perimeter fence or wall shall be not in excess of three and one-half feet in height where it borders a street, otherwise, it shall be not in excess of six feet in height. Appropriate building permits therefor shall be obtained in advance from the City of Layton.

## ARTICLE XII

### Damage or Destruction to Common Area

Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

- (a) In the event of damage or destruction to the Common Area, and the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.
- (b) If the insurance proceeds are within TEN THOUSAND (\$10,000.00) DOLLARS or less of being sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners, in accordance with the provisions of Article VI, Section 5 of this Declaration.
- (c) If the insurance proceeds are insufficient by more than TEN THOUSAND (\$10,000.00) DOLLARS to effect total restoration to the Common Area, then by written consent or vote of a majority of the Owners, they shall determine whether: (1) to rebuild and restore in substantially the same manner as the improvements existed prior to the damage and to raise the necessary funds over the insurance proceeds by levying equal Reconstruction Assessments against all Lots; (2) to rebuild and restore in a way which utilizes all available insurance proceeds and an additional amount not in excess of TEN THOUSAND (\$10,000.00) DOLLARS and which is assessable equally to all Owners but which is less expensive than replacing these improvements in substantially the same manner as they existed prior to being damaged; or (3) subject to the provisions of Article XIV, to not rebuild and to distribute the available insurance proceeds equally to the Owners and mortgagees of the Lots as their respective interests may appear.
- (d) Each Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the negligence or wilful misconduct of said Owner or of his family and guests, both minor and adult. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in

writing with such joint Owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Lot and may be collected as provided herein for the collection of Assessments.

### ARTICLE XIII

#### Insurance

Section 1. Insurance for Fire and Other Perils. The Association must obtain, maintain and pay the premiums upon, as a common expense, a "master" or "blanket" type policy of property insurance covering all of the common elements and other common personal property belonging to the Association, and also covering the individual dwelling structures, including fixtures therein, excluding, however, items of freestanding personalty within the units belonging to the Lot Owners, for the benefit of the Lot Owners. All references herein to a "master" or "blanket" type policy of property insurance is intended to denote single entity insurance coverage.

Such policy must be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by prudent institutional mortgage investors in the area. The policy shall be in an amount equal to 100% of current replacement costs of the structures.

The name of the insured under such policies must be set forth therein substantially as follows: "Spring Creek Owners' Association, for the use and benefit of the individual Lot Owners (designated by name if required by law.)"

The policies may also be issued in the name of an authorized representative of the Association, including any insurance trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor trustee, as insured, for the use and benefit of the individual owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Lot Owner and each such owners' mortgagee. The Association or Insurance Trustee, if any, must be required to hold any proceeds of insurance in trust for Lot Owners and their first mortgage holders, as their interest may appear.

Certificates of Insurance shall be issued to each Lot Owner and mortgagee upon request.

Such policies shall contain the standard mortgage clause or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area. Such policies must also provide that they may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies.

Policies are unacceptable whereby the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members.

The policies must also provide for the following:

- (a) Recognition of any Insurance Trust Agreement;
- (b) A waiver of the right of subrogation against Lot Owners individually.
- (c) That the insurance is not prejudiced by any act or neglect of individual Lot Owners; and
- (d) That the policy is primary in the event the Lot Owner has other insurance covering the same loss.

The insurance policy shall afford, as a minimum, protection against the following:

- (a) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement.
- (b) In the event the project contains a steam boiler, loss or damage resulting from such steam boiler equipment accidents in an amount of not less than FIFTY THOUSAND DOLLARS (\$50,000.00) per accident per location (or such greater amount as deemed prudent based on the nature of the property).

- (c) All other perils which are customarily covered with respect to Planned Residential Unit Developments similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement, where such is available.

In addition, such policies shall include an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement."

**Section 2. Replacement or Repair of Property.** In the event of damage to or destruction of any part of the Common Area facilities or other improvements in the Properties insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XII of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damages or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Assessments made against such Lot Owner in accordance with the provisions of Article VI, Section 5 of this Declaration. In the event of total destruction of all of the improvements in the Properties, the proceeds of the insurance carried by the Association shall be divided proportionately among the Lot Owners, such proportion based upon the original base sales price of each improved Lot at the time it was initially sold by the Declarant, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Lot is so encumbered.

**Section 3. Waiver of Subrogation.** As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board of Trustees, the owner, the manager, Declarant and the agents and employees of each of the foregoing with respect to any loss covered by such insurance, whether or not caused by negligence or of breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

**Section 4. Liability Insurance.** The Association shall obtain comprehensive public liability insurance, including medical



payments, liquor liability insurance and malicious mischief, in the amount of \$1,000,000.00 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of the Association or other Lot Owners.

The Association shall obtain liability coverage on members of the Board of Trustees for negligent conduct.

**Section 5. Fidelity Coverage.** The Association shall obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Lot Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half (1/2) times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

**Section 6. Other Insurance and General.** The Association may also obtain, through the Board of Trustees, Workman's Compensation Insurance and other liability insurance as it deems desirable, insuring each Lot Owner and the Association, Board of Trustees and Manager from liability in connection with the Common Area and the premiums for which are Common Expenses included in the Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other dwelling Lot Owners.

All policies shall be reviewed at least annually by the Board of Trustees and the limits increased at its discretion.

Notwithstanding any other provision herein, the Association shall continuously maintain in effect such casualty, flood and liability and bonds and other insurance meeting the requirements for planned unit developments established by the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), Housing and Urban Development (HUD), Federal Housing Administration (FHA), Veterans Administration (VA), State of Utah Finance Agency and conventional lending institutions, so long as there are any mortgages on any of the Properties.

**Section 7. Hazard Insurance.** Each Owner shall be responsible for hazard insurance on the contents of his property.

#### ARTICLE XIV

##### Mortgage Protection Clause

Notwithstanding any and all provisions hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), Housing and Urban Development (HUD), Federal Housing Administration (FHA), Veterans Administration (VA), State of Utah Finance Agency and conventional lending institutions, and to participate in the financing of the sale of Lots within the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provision of the Declaration, these added provisions shall control):

(a) Each first mortgagee of a mortgage encumbering any Lot, at written request, is entitled to written notification from the Association of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default.

(b) Each Owner, including every first mortgagee of a mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such mortgage, or by foreclosure of such mortgage or by deed (or assignment) in lieu

of foreclosure, shall be exempt from any "right of first refusal".

(c) Each first mortgagee of a mortgage encumbering any Lot which obtains a title to such Lot pursuant to the remedies provided in such mortgage or by foreclosure of such mortgage, shall take title to such Lot free and clear of any claims of unpaid assessments or charges against such Lot which accrued prior to the acquisition of title to such Lot by the mortgagee.

(d) Unless at least sixty seven percent (67%) of first mortgagees (based upon one vote for each mortgage owned), and Owners (other than the Declarant) have given their prior written approval, neither the Association or the Owners shall:

(1) by act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer the Common Area and the improvements thereon, directly or indirectly which are owned by the Association. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association or the transfer of the Common Area or improvements to an unincorporated association of the Owners in accordance with the Articles of Incorporate of the Association shall not be deemed a transfer within the meaning of this clause);

(2) change the method of determining the obligations, assessments due or other charges which may be levied against a Lot Owner;

(3) by act or omission change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design of the exterior appearance of the dwelling units, the maintenance of common property party walks, party walls or common fences and driveways or the up-keep of lawns and plantings in the Properties;

(4) fail to maintain fire and extended coverage insurance on Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement costs);

(5) use hazard insurance proceeds for losses to any Common Areal property for other than the repair, replacement or reconstruction of such improvement;

(e) First mortgagees shall have the right to examine the books and records of the Association during normal business hours.

(f) All first mortgagees shall be given: (1) thirty (30) days written notice prior to the effective date of any proposed material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association and prior to the effective date of any termination of an agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties; and (2) immediate notice following any damage to the Common Area whenever the cost of reconstruction exceeds TEN THOUSAND (\$10,000.00) DOLLARS and as soon as the Board of Trustees learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Properties;

(g) First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area property and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such property, and the first mortgagee making such payments shall be owed immediate reimbursement therefor from the Association;

(h) First mortgagees, pursuant to their mortgage, shall have priority over Unit Owners in case of a distribution of insurance proceeds or condemnation awards for losses to or taking of the Common Area property.

In addition to the foregoing, the Board of Trustees may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the GNMA or any similar entity so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first mortgages encumbering Lots with dwelling units thereon. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and

potential sellers of their dwelling units, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

Neither this Declaration nor the Articles of Incorporation nor the Bylaws of the Association will be amended in such a manner that the rights of any first mortgagee will be adversely affected.

#### ARTICLE XV

##### Expansion

Section 1. Additional Property. The Declarant anticipates that the project may be expanded to include certain contiguous real property which adjoins the property and which is situate in Davis County, State of Utah and which is described as follows, to-wit:

All of Parcel 3 of the Robins Estates Subdivision, described as follows: Beginning at a point on the East line of 1200 West (Angel Street) said point being North 00 degrees 09'57" West and 1,580.63 feet and North 89 degrees 55'23" East 33.00 feet from the Southwest Corner of Section 8, township 4 North, Range 1 West, Salt Lake Base and Meridian; thence along said Street North 00 degrees 09'57" East 400.21 feet; thence North 89 degrees 55'23" East 718.66 feet; thence South 00 degrees 09'57" West 660.26 feet to the North line of Dawn Subdivision; thence South 89 degrees 55'23" West 527.40 feet along said subdivision; thence North 00 degrees 09'57" East 260.05 feet; thence South 89 degrees 55'23" West 191.26 feet to the point of beginning.

Excepting, however, the Phase 1 property.

**Section 2. Reservation of Right to Expand.** Declarant hereby reserves the right to expand the project, without the consent of the Lot owners, to include additional structures and Lots which shall be compatible with the structures and Lots of this present project in terms of quality of construction, the principal materials to be used and architectural style, to be constructed on the real property described above, or any portion thereto. The total number of homes which may be constructed on said additional property shall not exceed thirty-eight (38) Lots and the entire project, including this present project and all subsequent phases, shall not exceed a total of fifty (50) Lots. The project shall consist of a minimum of twelve (12) Lots and a possible maximum of fifty (50) Lots.

**Section 3. Supplemental Declarations and Subdivision Plat.** Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Davis County, Utah, no later than seven (7) years from the date this Declaration is recorded in said office, a supplement or supplements to this Declaration containing a legal description of the site or sites for new Lots, together with supplemental Subdivision Plat containing the same information with respect to the new Lots as was required on the original Subdivision Plat with respect to the initial Lots. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

**Section 4. Expansion of Provisions.** In the event of such expansion, the provisions used in this Declaration automatically shall be expanded to encompass and refer to the project as so expanded and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in the project, as expanded, by use of the forms of descriptions set forth herein, with additional references to the supplemental Declarations and the supplemental Subdivision Plats.

**Section 5. Declaration Operative on New Lots.** The new Lots shall be subject to all the terms and conditions of this Declaration and of a supplemental Declaration, and the existing Lots therein shall be subject to supplemental Declaration or Declarations with all the incidents pertaining thereto as specified therein.

Section 6. Improvements, Liens and Consent.

(A) All improvements on the property to be added shall be substantially complete before such property is added to the project.

(B) Liens arising in connection with the Declarant's ownership of and construction of improvements upon the property to be added must not adversely affect the rights of existing Lot owners or the priority of first mortgages on Lots. All taxes and other assessments relating to such property covering any period prior to the addition of the property must be paid or otherwise satisfactorily provided for by the Declarant.

Section 7. Restrictions and/or Limitations. There shall be no restrictions or limitations as to what portion or portions additional land may be added to the project. Portions of additional land may be added without regard to time except as provided at Section 3 above) or boundaries.

No representations are made with regard to the locations of any improvements that may be made on any portions of the additional land or other improvements that will or will not be made on any portion of the additional land. However, the structures will be substantially identical to the structures on the land originally within the project.

Section 8. Liability Insurance. In the event of expansion, Declarant shall purchase, at its expense, a liability insurance policy in an amount to cover any liability to which owners of previous sold Lots might be exposed. This policy shall be endorsed "as owners' interest might appear."

**ARTICLE XVI**

**General Provisions**

Section 1. Enforcement. This Declaration, the Articles of Incorporation and the Bylaws may be enforced by the Association as follows:

(a) Breach of any of the covenants contained in the Declaration or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by an Owner, by the Association or the successor in interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in an amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and Court costs.

(b) The result of every act or omission whereby any of the covenants contained in this Declaration or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors in interest.

(c) The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the covenants contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not affect or impair the lien or charge of any bona fide first mortgage or Deed of Trust made in good faith and for value on any residential Lot or the improvements thereon, provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a Trustee's Sale or otherwise.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provisions which shall remain in full force and effect.



**Section 3. Term.** The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, perpetually, unless otherwise provided by an appropriate amendment.

**Section 4. Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of community recreational facilities and the Common Area. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

**Section 5. Amendments.** Except as provided and subject to any rights of the VA or the FHA hereunder, this Declaration may be amended only by the affirmative vote or written consent of the Owners holding not less than seventy-five percent (75%) of the voting power of each class of members; provided, however, that the prior written approval of at least seventy-five percent (75%) of all first mortgagees must be obtained also, before Article XIV may be amended. Notwithstanding the foregoing, prior to the sale of the first Lot in the Properties, Declarant shall have the right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification in accordance with the laws of the State of Utah and subject to Article XV, Section 6 of this Declaration. For purposes of this Declaration, the sale shall be deemed to be the date upon which a Deed conveying a Lot is recorded in the office of the Davis County Recorder.

Provided, further however, this Declaration shall not be amended in such a manner that the rights of any first mortgagee will be adversely affected.

**Section 6. No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of

all or any part of the Properties to the public or for any public use. (Except as shown on the recorded Plat).

**Section 7. Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

**Section 8. Reservation of Easements.** Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control, maintenance and repair of the utilities of adjoining Lot Owners. Declarant expressly reserves, for the benefit of all of the real property in the Properties and the Owners, reciprocal easements of access, ingress and egress over all Lots and over the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including without limitation, for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, for maintenance and repair of any dwelling. Such easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the Common Area. No Owner of a Lot shall interfere with the established drainage pattern over his Lot from adjoining or other Lots. Each Owner of a Lot shall make adequate provisions for drainage in the event he changes the established drainage over his Lot. For purposes of this Declaration, "established drainage" on any Lot is defined as the drainage pattern and facilities in existence at the time that such Lot is conveyed to a purchaser from Declarant. In the event that any dwelling unit encroaches upon the Common Area and facilities as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Declarant and the Lot Owners of each Lot on which there is constructed a dwelling unit along or adjacent to

said Lot shall have an easement appurtenant to said Lot over the Lot line to and over the adjacent Lot, for the purposes of accommodating any natural movement or settling of any dwelling unit located on said Lot, any encroachment of any dwelling unit due to minor engineering or construction variances and any encroachment of eaves, roof overhangs and architectural features as part of the original construction of any dwelling unit located on said Lot. Declarant reserves the right to grant exclusive easements over certain limited portions of the Common Area, if necessary, to certain Lot Owners for yard purposes, as required by the Federal Housing Administration. Declarant further expressly reserves, for the benefit of the Association, its agents and employees, easements of access, ingress and egress over the Lots and Common Area, for the purpose of maintaining, repairing and installing sewer pipelines and laterals in accordance with the provisions of this Declaration and as otherwise provided by law.

**Section 9. Notices.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered as provided either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice or to the residence of such person if no address has been given to the Association. Such address may be changed, from time to time, by notice in writing to the Association.

**Section 10. No Representations or Warranties.** No representations or warranties of any kind, express or implied, have been given or made by Declarant or his agents or employees in connection with the Properties or any portion of the Properties, or any improvements thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulations thereof as a planned development, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the Utah Land Sales Practices Administration or Layton City.

**ARTICLE XVI**

**Party Walls**

There exists party walls between structures on the Lots. The general common law rules with respect thereto apply. Neither Owner of a party wall may interfere with it to the detriment of the other, or do anything to its structure that will weaken it. The common party walls shall not be removed, remodeled, damaged or changed in any manner whatsoever by either Owner.

Damage to or destruction of the party walls shall be repaired or replaced at the common, equal expense of each owner.

Declarant has executed this Declaration on the day and year first above written.

WILLOW BEND INC.,  
A UTAH CORPORATION

By: *Denis R. Thurgood*  
Declarant

STATE OF UTAH        )  
                          )ss.  
COUNTY OF DAVIS    )

On the 2<sup>nd</sup> day of April, 1999, personally appeared before me Denis R. Thurgood personally known to me to be President, WILLOW BEND INC., A Utah Corporation, executed the forgoing instrument in the name of WILLOW BEND INC., and be acknowledged that he executed the same as the act and deed of said corporation for the uses and purposes therein mentioned.

*Betsy Gourley*  
NOTARY PUBLIC



ILLEGIBLE SEAL