

ENT 163422; 2006 PG 1 of 75  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
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RECORDED FOR OESER, JARED

**DECLARATION OF CONDOMINIUM  
FOR  
THE SPRINGS AT HARVEST HILLS CONDOMINIUMS  
Which are Phases of the Harvest Hills Master Planned Community  
A Master Planned Development  
City of Saratoga Springs, Utah**

**DECLARANT**  
Blueridge Homes, Inc.

**WHEN RECORDED RETURN TO:  
THE SPRINGS AT HARVEST HILLS CONDOMINIUM OWNERS ASSOCIATION  
c/o Blueridge Homes, Inc.  
PO Box 746  
Lehi, Utah 84043**

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FOR  
THE SPRINGS AT HARVEST HILLS CONDOMINIUMS  
Which are Phases of the Harvest Hills Master Planned Community  
A Master Planned Development  
City of Saratoga Springs, Utah**

This Declaration of Condominium for The Springs at Harvest Hills Condominiums (hereinafter referred to and defined as the "Declaration") recorded in connection with the Survey Map for The Springs at Harvest Hills Condominiums (hereinafter referred to and defined as the "Condominium Plat") is made and executed by Blueridge Homes, Inc., a Utah corporation, PO Box 746, Lehi, Utah 84043 (hereinafter referred to and defined as the "Declarant").

**RECITALS:**

A. This Declaration affects that certain real property located in Utah County, Utah described with particularity in Article II below. Declarant is the owner of the Land subject to this Declaration.

B. This Project is part of the Master Planned Development known as Harvest Hills Master Planned Residential Community or Harvest Hills Unit Development ("Harvest Hills") cover by a Master Development Plan and Master Development Plan Agreement (collectively the "Master Plan") approved by the City of Saratoga Springs, Utah ("City"). Harvest Hills includes or will include several residential subdivisions and condominium developments and also includes open space and common areas and improvements for the benefit of all of the residential developments including the Project. The owner/owner's of all of Harvest Hills, including the open space and common areas, has or will record a Master Declaration of Covenants, Conditions and Restrictions for Harvest Hills (hereinafter called the Master Declaration") and has or will incorporate a nonprofit corporation to be a Master Owners Association (hereinafter called the "Master Association") to own and/or manage the open space and common areas for the benefit of all the developments and residents at Harvest Hills and to own and or manage common facilities for the benefit of residents of all or several of the developments. Declarant intends that the Property be subject to and benefited by the Master Declaration and the Project shall be a "Phase of Development" as defined in the Master Declaration.

C. Declarant deems it desirable for the efficient preservation of the values and amenities of the Project to create a nonprofit corporation to which ownership of any common areas and amenities not owned and controlled by the Master Association shall be conveyed and to which shall be assigned and delegated the powers of enforcing the covenants. Conditions and restrictions contained in the Declaration and of assessing and collection the assessments and charges herein provided and to otherwise perform the responsibilities of a "Sub-Association", as defined in the Master Declaration and as provided in the Master Declaration.

D. Declarant has constructed, is in the process of constructing, or will construct a condominium project on the Land which shall include Residential Units, Limited Common

Areas and Facilities, Common Areas and Facilities, and other improvements. All of such construction has been, or is to be, performed in accordance with the Condominium Plat to be recorded concurrently herewith.

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E. Subject to the Condominium Plat and the covenants, conditions and restrictions set forth herein, Declarant intends to sell the fee title to the individual Units contained in the Property, together with an appurtenant undivided ownership interest in the Common Areas and Facilities and a corresponding membership interest in the Association of Unit Owners to various purchasers.

F. Declarant desires, by filing this Declaration and Condominium Plat, to submit the entire Land and all improvements now or hereafter constructed thereon to the provisions of Utah's "Condominium Ownership Act."

G. The Project is to be known as "THE SPRINGS AT HARVEST HILLS CONDOMINIUMS."

## DECLARATION

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

## I. DEFINITIONS

A. When used in this Declaration, each of the following terms shall have the meaning indicated.

1. Access Devices: Those certain devices which, if any are issued by the Association, shall be issued only to Owners and provide the holder physical access to the Building and confer upon the holder rights of access to and use of recreational facilities, if any, at the Project or otherwise made available by the Association to Owners.

2. Act: The Utah "Condominium Ownership Act", Utah Code Anno. §§57-8-1 et seq., as amended.

3. Additional Charges. Refers cumulatively to all collection and administrative costs, including but not limited to all attorneys' fees, fines, late charges, default interest, service or administrative fees, filing and recordation fees, and other reasonable expenditures incurred or charged by the Association.

4. Articles of Incorporation: Articles of Incorporation of THE SPRINGS AT HARVEST HILLS CONDOMINIUM OWNERS ASSOCIATION, a Utah non-profit corporation on file or to be filed with the Utah Department of Commerce.

5. Assessment: Amount imposed upon, assessed or charged to a Unit, Unit Owner or Occupant at the Project.
6. Association: All Unit Owners at the THE SPRINGS AT HARVEST HILLS CONDOMINIUMS taken as or acting as a group in accordance with the Declaration.
7. Board of Directors: Board of Directors of the Association as duly constituted.
8. Building: Any structure constructed on the Land.
9. Business Use and Trade: Any occupation, work, or activity undertaken in a Residential Unit on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: a) such activity is engaged in full or part-time; b) such activity is intended to or does generate a profit; or c) such activity requires a license.
10. Bylaws: Bylaws of the Association, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit C.
11. Capital Improvement: All new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project. Capital Improvement shall not include ordinary repair and maintenance of improvements originally constructed as a part of the Project (as modified or replaced from time to time), or the replacement of building components that are required to be replaced, whether by reason of normal wear and tear, damage, defect or functional obsolescence, regardless of whether any such replacements extend the useful life of the replaced component or any part of the Project and therefore would be capitalized for accounting purposes.
12. City: City of Saratoga Springs located in the County of Utah, State of Utah.
13. Common Areas and Facilities: All real property in the Project owned in common by the Unit Owners including but not limited to the following items:
  - (a) The real property and interests in real property submitted hereby, including the entirety of the Land and all improvements constructed thereon, excluding the individual Units, but otherwise including without limitation the exterior, demising and bearing walls, footings, foundations, roofs, exterior doors and door frames and all windows panes and window frames (subject to the obligation of the Owner of a Unit to replace any broken window panes with original quality product as undistinguishable as possible in all respects from the original).
  - (b) All Common Areas and Facilities designated as such in the Condominium Plat;

- (c) All Limited Common Areas and Facilities designated as such in the Condominium Plat;
- (d) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of at least two Unit Owners, such as telephone, electricity, gas, water and sewer;
- (e) The Project's common outdoor grounds, lighting, fencing, landscaping, sidewalks, parking amenities, clubhouse, swimming pool, and roadways;
- (f) All portions of the Project not specifically included within the individual Units; and
- (g) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.
- (h) Provided, however, utility installations such as telephone, electricity, gas, water, and sewer may be dedicated to the City and, if so, this definition shall not be construed to allow the Association to exclude the City from the ownership and control of the utility systems so dedicated.

14. Common Expense: (a) All sums lawfully assessed against the Owners; (b) Expenses of administration, maintenance, repair or replacement of the Project; (c) Expenses allocated by the Association among the Owners; (d) Expenses agreed upon as common expenses by the Association; and (e) Expenses declared common expenses by the Declaration.

15. Community: The Project.

16. Community Wide Standard: The standard of conduct, maintenance, or other activity generally prevailing in this Community, as determined by the Board of Directors from time to time.

17. Condominium Plat: The Condominium Plat or Maps of the THE SPRINGS AT HARVEST HILLS CONDOMINIUMS” on file in the office of the County Recorder of Utah County, as amended or supplemented from time to time.

18. Declarant: Blueridge Homes, Inc., a Utah corporation.

19. Declaration: This Declaration of Condominium for The Springs at Harvest HILLS Condominiums.

20. Design Guidelines: The architectural and engineering plans and specifications and guidelines prepared by the Declarant and approved by the City for the construction of the Buildings, Units, and other physical improvements in the Project, including by way of illustration but not limitation all structural components.

21. Development Plan: The development of the Property approved and amended from time to time with the consent of the City. Nothing in this Agreement shall preclude Declarant from seeking and obtaining the approval of the City to modify any aspects of the Development Plan proposed from time to time or to modify any conditions to the approval of the Development Plan imposed by the City from time to time or obligate Declarant to implement the Development Plan as it exists as of the date of this Declaration or at the time of the sale of any Unit if the Development Plan is later modified with the consent of the City.

22. Eligible Insurer: An insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

23. Eligible Mortgagee: A mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

24. Eligible Votes: Those votes available to be cast on any issue before the Association or the Board of Directors. A vote which is for any reason suspended is not an "eligible vote".

25. Family: One of the following in a residential Unit: (1) a single person living alone; (2) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, such as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent or great-grandchild, and an additional person or persons as domestic help or as a caretaker; or (3) a group of not more than three unrelated persons living and cooking together as a single housekeeping unit and maintaining a common household, but not as a rooming house.

26. Guest: An invitee, temporary visitor or any person whose presence within the Project is approved by or is at the request of a particular Occupant.

27. Land: All of the land subject to this Declaration more particularly described on attached Exhibit A.

28. Limited Common Areas and Facilities: Those Common Areas and Facilities designated in this Declaration or in the Condominium Plat as reserved for the use of a certain Unit Owner to the exclusion of the other Unit Owners. Any portico, colonnade, Unit entry, doorsteps, landings, porches, balconies, decks, patios, or other improvements, if any, intended to serve only a single Unit, shall constitute Limited Common Areas and Facilities appertaining to that Unit exclusively, whether or not the Condominium Plat makes such a designation.

29. Majority: Eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

30. **Manager** The person or entity appointed or hired by the Association to manage and operate the Project and/or assist in the administration of the Association.

31. **Master Association**: shall mean the Harvest Hills Master Home Owners Association that has been or will be incorporated as referred to in Recital C to the Declaration.

32. **Master Association Documents**: shall mean any property (including improvements thereon) for the common use and benefit of the Members resulting from the Declarant and/or the Association entering into an agreement or arrangement for common areas and facilities or amenities to be owned and/or managed by the master Association for the benefit and use of the Members and the members of other Sub-Associations but not for the use and benefit of all members of the Master Association.

33. **Master Association Limited Use Property**: shall mean any property (including improvements thereon) for the common use and benefit of the members resulting from the Declarant and/or managed by the Master Association for the Benefit and use of the Members and the members of other Sub-Associations but not for the use and benefit of all members of the Master Association.

34. **Master Association Property**: shall mean the property (including improvement thereon) owned and/or managed by the master association for the common use and benefit of all Members of the Master Association.

35. **Master Declaration**: shall mean the Master Declaration of Covenants Conditions and Restrictions for Harvest Hills referred to in Recital C of this Declaration.

36. **Map**: Dedicated Plat on file in the office of the County Recorder of Utah County, State of Utah.

37. **Member**: Unless the context clearly requires otherwise, the Owner of a Unit, each of whom is obligated, by virtue of his or her ownership to be a member of the Association.

38. **Mortgage**: Both a first mortgage or first deed of trust on any Unit, but shall not mean or refer to an executory contract of sale.

39. **Mortgagee**: A mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Unit.

40. **Occupant**: Any person living, dwelling, or staying in a residential Unit or occupying a commercial Unit in the Project. This includes but is not limited to all lessees, tenants and the family members, agents, representatives, or employees of Owners, tenants or lessees living, dwelling, or staying in a residential Unit or occupying a Commercial Unit in the Project.

41. **Owner**: The person who holds fee simple title to a Unit, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

42. **Par Value**: A number of points assigned to each Unit by the Declaration. The determination of Par Value by the Declarant shall be final, binding and conclusive.

43. **Period of Declarant's Control**: A period of time commencing on the date the original Declaration of Condominium for The Springs at Harvest Hills Condominiums was recorded and terminating on the occurrence of the earliest of the following events: (a) five (5) years from the effective date of this Declaration, (b) the date on which all of the Units to which nine-tenths (90%) of the undivided interest in the Common Areas and Facilities appertain have been conveyed, (c) the Declarant executes and records a written Waiver of its right to control.

44. **Person**: Refers to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

45. **Private Amenity**: Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of or within the Project, which are privately owned and operated by Persons other than the Association. For example by way of illustration and not limitation, any recreational facility, utility, communications facility, internet service provider, phone company, cable or satellite television provider, and all related and supporting facilities and improvements which are owned and operated by Persons other than the Association shall be a Private Amenity. Any property constituting a Unit or Common Areas and Facilities hereunder shall not be a Private Amenity.

46. **Project**: The Springs at Harvest Hills Condominiums Project.

47. **Project Documents**: The Declaration, Articles of Incorporation, Bylaws and Rules and Regulations governing and/or relating to the Project and its operations.

48. **Property**: All of the land, improvements and appurtenances submitted to the Act and this Declaration.

49. **Recreational, Oversized or Commercial Vehicle**: Any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

50. **Repair**: Correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damaged, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.



51. Residential Unit: A Unit designated on the Condominium Plat as “residential” which must be used for dwelling purposes as a Single Family Residence.

52. Single Family: One family.

53. Single Family Residence: A Unit architecturally designed and restricted by the Project Documents for use as a residence for a Single Family.

54. Unit: A separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a Building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; the Unit shall also include all interior surfaces of walls, floors and ceilings, and all finishes applied thereto including but not limited to all paint, wallpaper, wall coverings, the interior surfaces of all window panes and window frames (provided however that an Owner shall have the obligation to replace the entire window pane if broken), the interior surfaces of all exterior doors and exterior door frames, and all trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any interior non-bearing walls or other structural members, parts, components or any other property of any kind, including fixtures or appliances within the exterior boundaries of any Unit, and which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall also be deemed to be part of the Unit.

55. Unit Number: The number, letter or combination thereof designating a particular Unit.

56. Unit Owner: An Owner of a Unit.

B. Definitions in Master Declaration. Unless the context clearly indicates otherwise, any terms defined in the Master Declaration when used in this Declaration shall have the meanings so defined in the Master Declaration.

## II. SUBMISSION

The Land described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act.

The Land is hereby made subject to, and shall be governed by the Act, and the covenants, conditions and restrictions set forth herein. The Land is also subject to the right of the City to access driveways within the Project for emergency vehicles, service vehicles, and to all of the utility installations up to the residential meters.

The Land is SUBJECT TO the described easements and rights of way. Easements and rights-of-way in favor of the City include any dedicated roadways and public utility easements and are depicted on the Condominium Plat.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, including by way of illustration and not limitation all easements and rights-of-way in and to the Common Areas and Facilities, recreational amenities, and Private Amenities.

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

### III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. Description of Improvements. This Project will consist of Residential Units and Common Areas and Facilities, which will include common drives, parking areas and common utility systems. The Project will include nine (9) Buildings containing twelve (12) Residential Units, for a total of one hundred eight (108) Units altogether. The Building will be constructed principally of concrete foundations with exterior walls of brick, stucco veneer, membrane roofing, interior walls of wood studs, plywood and dry wall plaster. The Project will also contain other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Condominium Plat.

2. Description and Legal Status of the Property. The Condominium Plat shows the number of each Unit, its location, those Limited Common Areas and Facilities, if any, which are reserved for its use, and the Common Areas and Facilities to which it has immediate access. All Units shall be capable of being independently owned, encumbered and conveyed; and shall have an appurtenant undivided percentage of ownership interest in the Common Areas and Facilities, subject to the rights of Declarant, the City and all easements of record

3. Membership in the Association. Since membership in the Association is mandatory, each Unit Owner is a member of the Association and membership may not be partitioned from the ownership of a Unit.
4. Membership in Master Association. Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants or record to assessment by the Association, shall also be a member of the Master Association. Such membership shall be subject to the terms and provisions of the Master Declaration and the Master Association Documents. Membership in the Master Association shall be appurtenant to and may not be separated from the ownership of any Lot. Ownership of such Lots shall be the sole qualification for membership in the Master Association. Membership in the Master Association shall be subject to the same provisions and limitations as to delegation and transfer as apply to Membership in the Association.
5. Easement of Enjoyment of Master Association Property and Master Association Limited Use Property. Every Member shall have a right and easement of enjoyment in and to any Master Association Property and any Master Association Limited Use Property. Such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the provisions of the Master Declaration and the master Association Documents.
6. Owners' Votes in Master Association. The Association shall represent the Owners in the Master Association and shall vote the Owners' votes in the Master Association as determined by the Board. The Association may enter into agreements or arrangements with the Master Association and other Associations to provide for the management and operation of any Common Areas and Facilities or Amenities for the benefit and use of the Members and the members of other associations. The Association shall have one vote in the Master Association for each lot in the Project.
7. Master Association Assessments. Each Owner of a Lot, except Declarant and participated Developer, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the master Association all Common Assessments, Specials Assessments and Limited Use Assessments, if applicable, as provided in the Master Declaration and the master Association Documents. Such assessments will be determined and assessed by the Master Association and shall be paid directly to the Master Association.
8. Application of Master Declaration Architectural Control Provisions. The architectural control provisions of the Master Declaration shall apply to all Lots in the Project and unless the Master Association shall have delegated to the Architectural committee the ACC's authority to approved construction or modification of Buildings and Improvements, all such Buildings and Improvements must all be approved by the AC as provided in the Master Association Documents. The Board may, at its discretion, waive the application of the Architectural Control provisions of this Declaration, in which event, the ACC shall be solely responsible for architectural control in the Project.

9. Percentage of Ownership Interest. The undivided percentage of ownership interest of each Unit Owner in the Common Areas and Facilities shall have a permanent character and shall not be altered without the consent of at least two-thirds (2/3) of the Unit Owners expressed in an amendment of declaration duly recorded; provided, however, any change in the percentage of ownership interest of a Commercial Unit must also be approved in writing by all Commercial Unit Owners.

10. Limited Common Areas and Facilities. Limited Common Areas and Facilities are also Common Areas and Facilities. Limited Common Areas and Facilities may not be partitioned from the Unit to which they are appurtenant. The exclusive use of Limited Common Areas and Facilities is reserved to the Unit to which they are appurtenant.

11. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Unit shall describe the interest or estate involved substantially as follows:

Unit \_\_\_\_ of the THE SPRINGS AT HARVEST HILLS CONDOMINIUMS, as the same is identified in the amended condominium plat thereof recorded in Utah County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Utah County, Utah (as said amended condominium plat may have heretofore been further supplemented or amended) and in the amended and restated declaration of condominium of THE SPRINGS AT HARVEST HILLS CONDOMINIUMS recorded in Utah County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Utah County, Utah (as said Declaration may have heretofore been further supplemented or amended), together with an undivided percentage of ownership interest in the Common Areas and Facilities.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the membership in the Association, nor percentage of ownership interest in the Common Areas and Facilities, nor the right of exclusive use of Limited Common Areas and Facilities shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

12. Architectural and Design Guidelines. The Declarant has prepared Design Guidelines for the Project approved by the City. The Design Guidelines shall apply to all construction activities within the Project. The Declarant shall have sole and full authority to change, amend, and supplement the Design Guidelines as long as it owns any of the Property, subject only to the approval of the City.

13. Ownership and Use Restrictions. Each Owner shall be entitled to the exclusive ownership and possession of his or her Unit, to an undivided percentage of ownership interest

in the Common Areas and Facilities, and to membership in the Association as set forth herein, subject to the following use restrictions:

- a) Nature of and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his or her Unit(s). There shall be no requirements concerning who may own a Unit, it being intended that Units may and shall be owned as any other property rights by persons.
- b) Title to the Common Areas and Facilities. Each Unit Owner shall be entitled to an undivided percentage of ownership interest in and to the Common Areas and Facilities and Facilities as set forth on Exhibit B attached, free and clear of all liens (other than current years taxes, if any) prior to the Declarant's first conveyance of a Unit.
- c) Mandatory Association. Each purchaser of a Unit, by virtue of accepting a deed or other document of conveyance thereto, shall automatically become a member of the Association.
- d) Member's Easements and Rights of Way. Every Member of the Association shall have the right and non-exclusive easement to use and enjoy the Common Areas and Facilities . Such right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following restrictions:
  - (1) The right of the Association to limit the number of guests, and to adopt administrative rules and regulations from time to time governing the use and enjoyment of the Common Areas and Facilities;
  - (2) The right of the Association to suspend an Owner's voting rights and privilege to use amenities for: (a) any period during which his or her Assessment remains delinquent, and (b) a period not to exceed thirty (30) days after notice and hearing as may be set forth hereinafter for any infraction of the Association rules;
  - (3) Subject to the prior written consent of Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA) (where appropriate), the right of the Association to dedicate or transfer all or any part of the Common Areas and Facilities to any public agency, authority, or utility for the purpose

of providing utilities and similar or related purposes. During the Declarant's Period of Control, any such dedication or transfer shall be effective only if approved in writing by the Declarant; and

- (4) The right of the Association to charge a reasonable admission or other user fee for the use of any recreational facility situated in the Common Areas and Facilities.
- e) **Rules and Regulations.** The Association, acting through its Board of Directors, shall have the power and authority to adopt administrative and/or house rules and regulations and, in its sole discretion, to impose reasonable user fees for the amenities. Such rules, regulations and use restrictions shall be binding upon all Owners and Occupants, their guests and invitees. Provided, however, no rule shall be adopted in violation of the following provisions, except as may be specifically set forth in this Declaration (either initially or by amendment) or in the initial use restrictions:
- (1) **Similar Treatment.** Similarly situated Owners shall be treated similarly.
- (2) **Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kind normally displayed in units located in a project shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the Residential Units. No rules shall regulate the political content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).
- (3) **Activities Within Residential Units.** No rule shall interfere with the activities carried on within the confines of a Residential Unit, except that the Association may restrict, regulate or prohibit smoking as required or permitted by law, prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Residential Unit, or that create an unreasonable source of annoyance.
- (4) **Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Areas and Facilities to the detriment of any

Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas and Facilities available, from adopting generally applicable rules for use of Common Areas and Facilities, or from denying use privileges to those who abuse the Common Areas and Facilities or violate the Project Documents. This provision does not affect the right to increase the amount of Assessments.

- (5) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board of Directors for leasing or transfer of any Unit; provided, the Association or the Board of Directors may require a minimum lease term of no less than six months on a Residential Unit. The Association may require that Owners of Residential Units use lease forms approved by the Association, and may impose a reasonable transfer or impact fee on the lease or transfer of any such Unit provided it is not greater than an amount reasonably based on the costs to the Association of administering that lease or transfer or the related wear and tear of the project associated with moving in and moving out.
- (6) Reasonable Rights to Develop. No rule or action by the Association or Board of Directors shall unreasonably impede the Declarant's right to develop and market the Property, or the rights of any Mortgagee.
- (7) Interference With Private Amenities. No rule or action by the Association shall interfere with the use or operation of any Private Amenity.
- f) Parties Bound. All provisions of the Project Documents shall be binding upon all Owners and Occupants, and their families, guests and invitees.
- g) Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the creation or maintenance of a nuisance in, on or about the Project. The term "nuisance" includes but is not limited to the following:
  - (1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about his or her Unit or the Common Areas and Facilities;
  - (2) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous,

unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other Occupants, their guests or invitees;

- (3) Unreasonable amounts of noise or traffic in, on or about any Residential Unit or the Common Areas and Facilities. What is deemed unreasonable shall take into account various factors including day of the week and time of day. For illustration only and not for the purpose of binding the Association to the particulars of this illustration, the amount of noise or traffic considered unreasonable may be materially less between the hours of 10:00 p.m. and before 7:00 a.m. during the week and midnight and 8:00 a.m. during weekends than during other times; and
  - (4) Drug houses and drug dealing; the unlawful sale, manufacture, service, storage, distribution, dispensing or acquisition occurs of any controlled substance; gambling; criminal activity; parties which occur frequently which bother, annoy or disturb other reasonable Occupants or interfere with their quiet and peaceful enjoyment of the premises; prostitution; or other violation of U.C.A., Section 78-38-9 (1999) as amended or supplemented.
- h) Removing Garbage, Dust and Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be deposited in sealed plastic bags or other authorized containers, shall be regularly removed from the Unit, not being allowed to accumulate therein so as to create a sanitation, health or safety hazard, and shall be disposed of down the garbage shoots and/or within dumpsters provided by the Association.
  - i) No Subdivision of a Unit. No Unit may be subdivided.
  - j) No Severance. The elements of a Unit and other rights appurtenant to the ownership of a Unit, including interest in Common Areas and Facilities, Limited Common Areas and Facilities, if any, are inseparable, and each Owner agrees that he or she shall not, while this Declaration is in effect, make any conveyance of less than an entire Unit and such appurtenances.
  - k) Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting or graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, paintball guns, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.



- l) **Temporary Structures.** No Owner or occupant shall place upon any part of the Project any temporary structures, including but not limited to dog runs, storage units, tents, trailers and sheds or their equivalent, without the prior written consent of the Board of Directors.
- m) **Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections.** All property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the Common Areas and Facilities without the prior written consent of the Board of Directors. The Board of Directors may alter or remove any objects planted or placed in violation of this subsection and shall not be guilty of a trespass.
- n) **Energy Conservation Equipment.** Except in accordance with U.C.A., Sections 10-9-901 and 17-27-901, no solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project without the prior written consent of the Board of Directors.
- o) **Business Use.** No Business Use and Trade may be conducted in or from any Residential Unit unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of Occupants of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Occupants of the Project, as may be determined in the sole discretion of the Board of Directors. Notwithstanding the above, the leasing of a Residential Unit shall not be considered a trade or business within the meaning of this sub-section.
- p) **Storage and Parking.** The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the parking rules and regulations adopted by the Board of Directors from time to time, which may include immobilizing, towing and impounding of motor vehicles in violation of said rules. No parking or storage shall be allowed within the Project for Recreational, Oversized or Commercial Vehicles except for any temporary parking in connection with moving, loading or unloading. Outside storage of any goods is strictly prohibited.

- q) Aerials, Antennas, and Satellite Systems. Antennas and satellite dishes shall be prohibited within the Property, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter or diagonal measurement; (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals (“Permitted Devices”) shall be permitted, provided that any such Permitted Device is: (1) located in the attic, crawl space, garage, or other interior spaces of the Unit or another approved structure on the Property, so as not to be visible from outside the Unit or other structure; and (2) mounted in the Limited Common Areas and Facilities immediately adjacent to the Unit, such as a balcony, deck or patio in the rear of the building, and extending no higher than the eaves of that portion of the roof of the Unit directly in front of such antenna. The Board of Directors may adopt rules establishing a preferred hierarchy of alternative locations and requiring screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device in the authorized areas.
- r) Window Coverings, Awnings and Sun Shades. No-aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any residential structure on a Unit. Sun shades are not allowed on the exterior of any Building, unless the color, style, construction material and uniformity of appearance are approved by the Board of Directors.
- s) Windows. All windows and window panes in the Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction. In the event a Window pane within a Unit is broken, the Unit Owner shall cause the window pane to be replaced at the Unit Owner’s sole cost and expense with a window pane consistent with the requirements of this paragraph.
- t) Pets. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two (2) domestic pets per Unit are allowed. All pets must be properly licensed and registered with the appropriate governmental agency, abide by all pet rules and regulations adopted by the Board of Directors from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to the property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Areas and Facilities and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines or howls, or makes other disturbing noises in an excessive,

continuous or untimely fashion; or (f) it molests or harasses passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Areas and Facilities. Aquariums must be approved by the Board of Directors prior to placement anywhere in a Unit or on the Property. The Board of Directors may require a pet deposit or a pet registration fee.

- u) Structural Alterations. Except in the case of an emergency repair, no structural alterations, plumbing, electrical or similar work within the Common Areas and Facilities or Limited Common Areas and Facilities shall be done or permitted by any Owner without the prior written consent of the Board of Directors. .
- v) Signs and Lighting. No signs, billboards, lights or other material visible from outside may be placed or displayed in the Residential Units. Except for seasonable Christmas decorative lights, which may be displayed between November 25 and January 10 only, all exterior lights on Residential Units must be approved by the Board of Directors. The foregoing shall not be deemed to limit the installation of lighting and signage to the extent permitted by and consistent with the Development Plan approved by the City. The Association shall comply with all City requirements regarding signage and lighting.
- w) Playground. Any playground or other play areas or equipment furnished by the Association or erected within the Project, if any, shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.
- x) Fences. No dog runs or animal pens of any kind shall be permitted on any Common Areas and Facilities.
- y) Heating of Units in Colder Months. In order to prevent breakage or leakage of water pipes during colder months of the year resulting in damage to Units and Common Areas and Facilities or Facilities, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all Units shall be maintained with the heat in an *on* position and at a minimum of fifty-five (55 °) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) during the months of October, November, December, January, February, March, and April whenever the temperature outside is forecasted to or does reach thirty-two (32 °) degrees Fahrenheit or below. Owners and occupants of Units shall take all steps possible on a timely basis to keep the heating equipment including, but not limited to, the thermostat in good working order and

repair. At any time during the months specified above when the heating equipment is not working, the Unit Owner shall immediately inform the Board of Directors of this failure of the equipment and of the time needed in order to repair the equipment

- z) Outdoor Burning. Outside burning of trash, leaves, debris, or other materials is prohibited.
- aa) Sound Systems. The use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to Occupants of other Units is prohibited, except that alarm devices used exclusively for security purposes are permitted.
- bb) Firecrackers and Fireworks. The use and discharge of firecrackers and other fireworks within the Project is prohibited.
- cc) Dumping. No Person may dump grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any part of the Project, except that fertilizers may be applied to landscaping provided care is taken to minimize runoff, and Declarant and builders may dump and bury rocks and trees removed from a building site on such building site.
- dd) Timesharing. Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years is prohibited.
- ee) Insurance. Nothing shall be done or kept in, on or about any Unit or in the Common Areas and Facilities or Limited Common Areas and Facilities Common Areas, and Facilities which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Board of Directors, but for such activity, would pay.
- ff) Laws. Nothing shall be done or kept in, on or about any Unit or Common Areas and Facilities, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body or a violation of any requirement of the Development Plan approval imposed by the City.
- gg) Damage or Waste. No damage to, or waste of, the Common Areas and Facilities or Limited Common Areas and Facilities, Common Areas and Facilities shall be committed by any Owner or Occupant, their guests or invitees; and each Owner and Occupant shall indemnify and hold the

Board of Directors and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner or Occupant, their guests or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner.

- hh) Barbeques. No barbeque or similar device shall be used or kept in any Limited Common Areas and Facilities, including decks and patios. The Association may designate, equip and regulate barbeques and similar devices and activities in Common Areas and Facilities other than Limited Common Areas and Facilities.

14. Leases. Any agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "lease") shall be in writing. The Board of Directors must approve any proposed lease form prior to its use. Such approval shall not be unreasonably denied or delayed but may dictate matters reasonably calculated to preserving, protecting and enhancing the value and interests of the Project. Once a lease has been approved as to form, it may be used in subsequent transactions unless and until the Board of Directors notifies the user of the form that approval has been withdrawn. Copies of any and all executed leases shall be delivered to the Board of Directors within five (5) days of their execution. By virtue of taking possession of a Unit, each lessee agrees to be subject to and abide by these restrictive covenants, and that any covenant violation shall be deemed to constitute a default under the lease. No Owner shall be permitted to lease his or her Unit for transient, hotel, seasonal, or corporate/executive use purposes, nor may a rental pool be required. The term "transient" by way of illustration and not limitation includes the rental of any Residential Unit with an initial term of less than six (6) months. Daily or weekly rentals are prohibited. No Owner of a Residential Unit may lease individual rooms to separate persons or less than his or her entire Unit without the express written consent of the Board of Directors. Within ten (10) days after delivery of written notice of the creation of a nuisance or material violation of these restrictive covenants, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board of Directors in writing of his or her intentions. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

15. Easements -- Support, Maintenance and Repair. There is hereby RESERVED to the City and the Association, and the City and the Association are hereby GRANTED a non-exclusive easement over, across, through, above and under the Units and the Common Areas and Facilities for the operation, maintenance, inspection and repair of the Common Areas and Facilities and Facilities, regulation of the Design Guidelines and enforcement of any applicable City laws or requirements including any conditions imposed in connection with the approval of any applicable Development Plan. The City shall assume no responsibility for enforcement of the Design Guidelines, but reserves the right to and may enforce any Design Guideline at any time and in its sole discretion. There is further reserved to the Declarant and any of its contractors and their subcontractors a non-exclusive easement over, across, through, above and under the Units and the Common Areas and Facilities for the inspection and repair of any

portion of the Unit or the Common Areas and Facilities and Facilities covered by a construction warranty or a right of inspection or repair or other arrangement.

16. Liability of Owners and Occupants For Damages and Waste. Each Owner or Occupant shall be liable to the Association, or other Owners or Occupants, for damages to person or property and waste in the Community caused by his or her negligence or the negligence of his or her guest(s).

17. Encroachments. If any portion of Common Areas and Facilities, Limited Common Areas and Facilities, Common Areas and Facilities, or a Unit encroaches or comes to encroach upon other Common Areas and Facilities, Limited Common Areas and Facilities, Common Areas and Facilities, or a Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

18. Board of Directors. The Association shall be managed by a Board of Directors.

19. Officers and Agents. The Board of Directors shall elect and/or appoint officers and agents of the Association, including without limitation a President, Secretary, and Treasurer.

20. Board of Directors Meetings The Board of Directors shall meet at regular intervals.

21. Status and General Authority of Board of Directors. Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Board of Directors' power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (j) below, constitute a legal entity capable of dealing in its Board of Directors name. The Board of Directors shall have, and is hereby granted, the following authority and powers:

- a) Access. The right, power and authority to have access to each Unit: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Unit being entered, as may be necessary for the inspection, maintenance, repair or replacement of any of the Common Areas and Facilities and Facilities; or (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities and Facilities or to another Unit or Units, provided that a reasonable effort is made to provide notice to the occupant of the Unit prior to entry.
- b) Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable,

reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas and Facilities for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

- c) Execute. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Condominium Plat which has been approved by the vote or consent necessary to authorize such amendment.
- d) Standing. The power to sue and be sued.
- e) Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.
- f) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Association Members.
- g) Purchase Property. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy five (75%) percent of the Association Members.
- h) Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least seventy five percent (75%) of the Association Members.
- i) Borrow Money and Pledge Collateral. The power and authority to borrow money and pledge collateral so long as it has been approved by a majority of those in attendance in person or by proxy at a meeting specifically called for this purpose.
- j) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Board of Directors in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the Act and this Declaration.
- k) Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners or Occupants not on the Board of Directors, to retire to executive session, to regulate record

keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Board of Directors meetings.

- l) Delegation of Authority. The power and authority to delegate its responsibilities over the management and control of the Common Areas and Facilities and regulation of the Project to a professional manager, reserving the right, power and authority, however, to control and oversee the administration thereof.
- m) Councils. The power and authority to create advisory committees or councils to represent the interests of any particular building or area.
- n) Right to Limit Access to Building and Use of Recreational and Private Amenities. The requirement that access to the Building and use of recreational facilities and Private Amenities within the Project or available to the Association by contract shall be subject to the presentation of a valid Access Device issued by the Association, if so determined by the Board of Directors. If an Owner rents or leases the Owner's Unit, such Access Device(s) as may have been issued to the Owner shall be given to the non-Owner Occupant of the Unit. The number and permitted recipients of Access Devices shall at all times be subject to regulation by the Association acting through its Board of Directors.
- o) Communications Facilities. The power and authority to (1) construct, erect, install, place or maintain a radio, television or satellite antenna, or other aerial, dish, transmitting device or reception structure for a master satellite, television or radio system, should any such master system or systems be utilized by the Association or Owners and require such fixtures; and (2) enter into an easement, lease or license agreement, or any combination thereof, with a communications company to provide space and access for communications holders for antenna facilities and related equipment in the Common Areas and Facilities.
- p) Private Amenity Company. The power and authority to enter into an easement, lease or license agreement, or any combination thereof, with the owner or operator of a Private Amenity to provide space and access for a specific purpose or use in the Common Areas and Facilities, provided such purpose or use is consistent with the residential nature of the Project.
- q) Utility Services. If a utility service is deregulated, the power and authority to provide, make available or broker utility services to the Association or the Owners, provided that such is not in violation of local, state or federal laws and is for the benefit of the Owners.



- r) Metering. The power and authority to install a master meter or individual meter(s) for utilities, or a combination thereof.
- s) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions on behalf of the Owners.

Anything to the contrary notwithstanding, while Declarant controls the Association and before the end of the Period of Declarant's Control, any amendments to the Declaration or mergers must (where appropriate) be approved in writing and in advance by Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA).

22. Delegation of Management Responsibilities: The Board of Directors may delegate some of its management responsibilities to a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty of any kind or any advance notice of any more than ninety (90) days, and no such contract or agreement shall be for a term greater than one (1) year. The Board of Directors may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities. Provided, however, any management contract may be terminated for cause on thirty (30) days notice in accordance with the termination provisions of Title 38, Code of Federal Regulations, Section 36.4360a (f), as it may be amended from time to time.

23. Owners Meetings. The Association shall meet at least annually.

24. Lists of Owners, Renters, Eligible Mortgagees, Insurers and Guarantors. The Board of Directors shall maintain up to date lists of the name, address and phone number of all Owners, renters, Eligible Mortgagees, Insurers and Guarantors, provided the Owners, Mortgagees, Insurers and Guarantors provide such information to the Board of Directors.

25. Capital Improvements. All expenses for Capital Improvements shall be governed by and subject to the following conditions, limitations and restrictions:

- a) Board of Directors Discretion/Expenditure Limit. Any Capital Improvement to the Project which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be

authorized by the Board of Directors alone (the "Capital Improvement Ceiling").

- b) Owner Approval/Expenditure Limit Any Capital Improvement, the cost of which is expected to exceed the Capital Improvement Ceiling, must be authorized by at least a majority of the percentage of undivided ownership interest in the Common Areas and Facilities prior to being contracted for.
- c) Owner Approval/Changing the Nature of the Project Improvements. Any Capital Improvement which would materially alter the nature of the Project Improvements (e.g., changing the roofing materials, the construction of the external Building surfaces, color scheme, etc.) must, regardless of its cost, be authorized by at least sixty-seven (67%) percent of the undivided ownership interest in the Common Areas and Facilities prior to being contracted for.
- d) Repairs and Replacements. The Association has the responsibility to repair and maintain all improvements constructed as a part of the Project (as modified or replaced from time to time), and to replace Building components that are required to be replaced, whether by reason of normal wear and tear, damage, defect or functional obsolescence, regardless of whether any such replacements extend the useful life of the replaced component or any part of the Project and therefore would be capitalized for accounting purposes. The costs of such repairs and replacements shall be covered by Assessments. No Unit Owner approval is required for these activities of the Association.

26. Operation, Maintenance and Alterations. Each Unit, the Limited Common Areas and Facilities, and Common Areas and Facilities shall be operated, maintained, repaired, and replaced in accordance with the following covenants, conditions and restrictions:

- a) Clean, Safe, Sanitary and Attractive Condition. The Units, Limited Common Areas and Facilities, and Common Areas and Facilities shall be maintained in a usable, clean, functional, safe, sanitary, attractive and good condition, consistent with Community Wide Standards.
- b) Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be neatly trimmed. The grounds and landscaping shall enhance and not either affect adversely the value or use of any other Unit, or detract from the original architectural scheme of the Declarant and the uniform design and appearance of the Project.

- c) **Area of Common Responsibility.** Unless otherwise expressly noted, the Association shall maintain, repair and replace all of the Common Areas and Facilities within or serving the Project (the "Area of Common Responsibility"). Within the Area of Common Responsibility, the Association shall develop a program of regular inspection, maintenance and repair to prolong the life and maintain the overall quality of the Project and all improvements. Where necessary, the Association shall replace Building components that are required to be replaced, whether by reason of normal wear and tear, damage, defect or functional obsolescence. The Association shall take all necessary actions to minimize damage to any improvements or persons that are caused by any condition affecting Project improvements and to correct the cause of the condition, whether the condition was caused by damage, defective design or construction or functional obsolescence and regardless of whether the Association may have a claim under a warranty or insurance policy. The Association shall cause inspections to occur for the purpose of identifying, providing notice of and causing the repair of any defective construction prior to the expiration of any applicable warranty periods. The Association shall repair and replace all Limited Common Areas and Facilities improvements as may be required from time to time, including any cement, decking and fencing, except to the extent any damage was caused by the Occupant or its guests and other invitees. The activities of the Association within the Area of Common Responsibility shall be paid for through Assessments.
- d) **Area of Personal Responsibility.** The "Area of Personal Responsibility" of each Owner shall include the following. Each Owner shall maintain, repair and replace his or her Unit, including without limitation all individual services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, fixtures, window panes and to the extent damaged by use, all window systems, doors and door systems, and garage doors and garage door systems. Decks, patios, fencing, railings, side walks and driveways that are exclusive to individual unit use is the responsibility of the individual homeowner. Each Occupant shall also be responsible for maintaining the Unit and Limited Common Areas and Facilities in a clean, safe, functional and attractive condition, free from garbage or debris. Each Owner shall repair any damage caused by the Occupant to the Unit and Limited Common Areas and Facilities. The Board of Directors may adopt rules to regulate or prohibit items of personal property, including furniture and furnishings allowed on decks, balconies and patios. In addition to the above duties, each Occupant and each Owner has a duty to inspect his or her Unit correct any conditions that require correction, maintenance repair or replacement and report to the Association any conditions in or affecting Limited Common Areas and Facilities or Common Areas or Facilities that the Owner becomes aware of requiring correction, maintenance, repair or replacement. The failure of

an Occupant or Owner to correct one of the above conditions in his or her Unit or report one of the above conditions affecting the Limited Common Areas and Facilities, Common Areas and Facilities in a timely manner (as soon as possible after discovery for emergency conditions and within 48 hours of discovery for all other conditions) will constitute a waiver of any claim by the Owner for repair, or for costs or losses incurred by Owner in connection with such unreported conditions.

- e) Changes in Areas of Maintenance Responsibility. The Areas of Personal or Common Responsibility may be changed by the Declarant until the end of Declarant's Period of Control, provided the Project is maintained in accordance with any requirements of the City.
- f) Default Provisions. If (except in the case of an emergency) after written notice and a hearing, it is determined that any responsible party has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein or the inspection and reporting obligations described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any person, then the City, the Association, or Board of Directors may, but is not obligated to, provide such maintenance, repair, or replacement at the defaulting or responsible party's sole cost and expense (the "Default Maintenance Cost"). The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be collectible as such. In addition, it may be considered a "Fine" against a Unit Owner. A Fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Unit Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Common Expenses under U.C.A., Section 57-8-20.
- g) Alterations to the Common Areas and Facilities. The Declarant may make changes to the design and construction of the improvements located in or on the Common Areas and Facilities without additional approval required, including without limitation the consent of the Board of Directors or Members of the Association; provided, however, no Owner or Occupant may make any structural alterations to the Unit or the Common Areas and Facilities without the express prior written consent of the Board of Directors.
- h) Certain Work Prohibited. No Unit Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other Unit Owners being first had and obtained.

27. Budget, Assessments and Common Expenses. Each Owner shall pay his or her share of the Common Expenses and Assessments subject to and in accordance with the following:

- a) Declarant. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Units owned by it until such time as the earlier of the following two events occurs: (1) the physical structures are substantially completed and certificates of permanent occupancy are issued, and the Units are sold or rented or (2) Declarant elects in writing to pay the Assessments.
- b) Purpose of Common Expenses and Assessments. The Common Expenses incurred and Assessments provided for herein are for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board of Directors.
- c) Budget. At the Annual Homeowners Meeting, the Board of Directors shall prepare and deliver to the Owners a proposed Budget which:
  - (1) Itemization. Shall set forth an itemization of the anticipated Common Expenses for the budget year, commencing with the first annual meeting.
  - (2) Basis. Shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and Facilities and regulation of the Association, which estimate shall include but is not limited to expenses of management, irrigation water, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board of Directors is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Areas and Facilities and replacement of those elements of the Common Areas and Facilities that must be replaced on a periodic basis or that have been damaged or are defective or functionally obsolete, wages for Board of Directors employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, reserves for possible Capital Improvements, major repairs and replacements of Project

components, including a contingency for the replacement of components that are defective or become damaged or functionally obsolete, costs for inspections and to develop a maintenance and repair program and periodic estimates for reserves, costs for any extended warranty program covering Project components, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

- d) Apportionment. The common profits, losses and voting rights of the Project shall be distributed among and the common expenses shall be charged to the Unit Owners on the basis of the Par Value of each Unit, as set forth in Exhibit B, attached hereto and incorporated herein by this reference.
- e) Approval of Budget and Assessments. The proposed Budget and Assessments shall become effective unless disapproved at the Annual Meeting of the Association by a vote of at least a majority of the percentage of ownership interest in the Common Areas and Facilities. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Board of Directors fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Common Areas and Facilities Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year. The failure to propose or obtain approval of a budget shall not remove from the Association the obligation of the Association to conduct maintenance, repair and replacement activities so as to preserve the functionality of improvements and to correct conditions that may give rise to damage to persons or property.
- f) Payment of Assessments. The Board of Directors has the sole authority and discretion to determine how and when the Assessments are paid.
- g) Personal Obligation of Owner. Each Owner is liable to pay his or her share of the Common Expenses and Assessments against his or her Unit as well as any Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust, who obtains title to a Unit pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title.
- h) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Board of Directors.

- i) Reserve Account and Analysis Report. The Board of Directors shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses, for any anticipated Capital Improvements and for planned or unplanned repairs or replacements to Project components that are defective or become damaged or functionally obsolete. A minimum of \$10.00 per month per unit in addition to the operating budget needs will be included in the annual budget. This amount is earmarked exclusively for the reserve account of the association and can not be used for ordinary operating budget expenses. This money will be transferred into the reserve account at least quarterly throughout the year. In addition, the Board of Directors shall prepare and update at least annually a written Reserve Account Analysis documenting the appropriate levels of reserves and the anticipated schedule for major repairs and replacements, which Analysis shall be developed considering the condition of the Project and its components, the information described in the Capital Asset Table described in the following section, and any need to correct damaged, defective or functionally obsolete conditions or components. The Board of Directors will make all such reports and analyses available to the Owners at the annual meeting of the Association.
- j) Capital Asset Table. The Board of Directors shall establish and update at least annually a Capital Asset Table which shall list each major capital asset in the Project (e.g. roofs, roads, building exteriors, clubhouse, swimming pool, spa, basketball court and tot lot, etc.), each item's expected useful life, the present cost of replacement, the estimated cost to replace the item at the end of its useful life, the percentage and amount of the monthly Assessment currently set aside in the reserve account to replace the item at the end of its useful life, and the amount of money currently set aside in the reserve account for the replacement of the item.
- k) Statement of Assessments Due. Upon written request, the Board of Directors shall furnish to any Owner a statement of Assessments due, if any, on his or her Unit. The Association may require the advance payment of a processing charge not to exceed any statutory maximum applicable to such charge at the time of the issuance of such certificate.
- l) Superiority of Assessments. Each Owner by virtue of his or her acceptance of a deed or other document of conveyance to a Unit hereby waives his or her right to claim that his or her homestead exemption is superior to any lien securing payment of his or her share of the Common Expenses or an Assessment. All Assessments are, however, junior and subordinate to the first mortgage liens of record before a notice of lien for unpaid assessments is recorded in the office of the county recorder.

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

- a) Board of Directors Based Assessment. So long as the special assessment

does not exceed the sum of One Hundred and 00/100th Dollars (\$100.00) per Unit in any one budget year (the "Special Assessment Limit"), the Board of Directors may impose the special assessment without any additional approval provided that the reason for which the money is needed is for deferred common area or building maintenance needs.

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

29. Benefit Assessments. If an Owner has the choice to accept or reject the benefit, then the Board of Directors shall have the power and authority to assess an Owner in a particular area as follows:

- a) Benefit only To Specific Unit. If the expense benefits less than all of the Units, then those Units benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit received.
- b) Unequal or Disproportionate Benefit. If the expense benefits all Units, but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received. Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Directors' right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section. \

30. Individual Assessments. Individual assessments ("Individual Assessments") shall be levied by the Board of Directors against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Board of Directors in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Areas and Facilities for which the Unit Owner is responsible; (c) any other charge, fine, fee, dues, expense, or cost designated as an Individual Assessment in the Project Documents or by the Board of Directors; and (d) attorneys' fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration.

31. Collection of Assessments. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month or the first day of such other period established for the payment of Assessments. Payments are late if received more than ten (10) days from the date that they became due.



- a) Delinquent Assessments. Any Assessment not paid when due shall immediately constitute a lien automatically attaching to the interest of the Owner in the Unit for which the Assessment is not paid, regardless of whether a written notice is recorded.
- b) Late Fees and Accruing Interest. Late fee of twenty-five dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater, shall be assessed on all tardy payments. Default interest at the rate of one and one-half percent (1.5%) per month or eighteen (18.0%) per annum shall accrue on all delinquent accounts. Late fees and default interest may be modified from time to time by the Board of Directors.
- c) Priority of Lien as Against Third Parties. If any Unit Owner fails or refuses to make any payment of any Assessment or his or her portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Board of Directors or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Unit in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.
- d) Foreclosure of Lien and/or Collection Action. If the Assessments remain unpaid, the Association may, as determined by the Board of Directors, institute suit to collect the amounts due and/or to foreclose the lien.
- e) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.
- f) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas and Facilities or the abandonment of his or her Unit.
- g) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board of Directors to take some action or perform some function required to be taken or performed by the Association or Board of Directors under this Declaration or the Bylaws, or for inconvenience or

discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

- h) Foreclosure of Lien as Mortgage or Trust Deed The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein. The sale or foreclosure may be conducted in the same manner as foreclosures of mortgages, trust deeds (pursuant to the provisions of Utah Code Ann. §§57-1-19 et seq. as amended or successor statute) or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the expenses of such proceedings, including but not limited to the cost of a foreclosure report and reasonable attorneys' fees. Such lien shall also secure and require the Owner to pay to the Association any Assessments against the Unit which shall become due during the period of foreclosure. To the extent and under the circumstances permitted by law, the Owner shall pay to the Association, the reasonable rental value for the Unit if it is Owner occupied during the period of foreclosure. If the Unit is rented during the period of foreclosure, the Association shall be entitled to collect such rents during the period of foreclosure. The Association in the foreclosure action may require the appointment of a receiver to collect rents without regard to the value of the Owner's interest in the Unit. The Association may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.
- i) Attorney in Fact to Collect Rent. Each Owner hereby conveys and warrants the Unit in trust with power of sale to the Association's attorney as trustee to secure performance of the Owner's obligations, to the Association, as beneficiary. The Owner hereby requests that any and all notices of default and other communications material to an exercise of the power of sale be sent to the street address of the Owner's Unit and the last known mailing address of the Owner as shown on the books and records of the Association, if different from the Unit address.
- j) City Right to Perform and Assess for Failed Association. If the Association fails to maintain the Common Areas and Facilities as provided in this Declaration, the City may, at its option, do or contract to have done the required maintenance and shall assess ratably the Units. Any such assessment on a Unit shall be a lien against that Unit and shall be filed with the Utah County, Utah, Recorder, or the City may bring suit against individual non-paying Unit Owners, after reasonable notice, to collect such assessments together with reasonable attorney's fees and costs.

- k) Remedies for Failure to Pay Assessments. If an owner fails or refuses to pay any assessment when due, the Board of Directors may in accordance with the Act (i) terminate an owner's right to receive utility services paid as a common expense; (ii) terminate an owner's right of access and use of recreational facilities; and (iii) demand a rental tenant pay to the association all future lease payments due the owner.

32. Liability of Board of Directors. The Association shall indemnify every officer and member of the Board of Directors against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Board of Directors in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she or she may be a party by reason of being or having been an officer or member of the Board of Directors. The officers and members of the Board of Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board of Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board of Directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Board of Directors free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board of Directors, or former officer or member of the Board of Directors, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and directors insurance coverage to fund this obligation, if such insurance is reasonably available.

33. Insurance. The Manager, Board of Directors or Association shall obtain insurance against loss or damage by fire and other hazards for: (a) all Common Areas and Facilities and Facilities; and (b) all Buildings that contain more than one Unit, including any improvement which is a permanent part of a Building. The insurance coverage shall be written on the property in the name of the Manager, Board of Directors or Association, as trustee for each of the Unit Owners in the percentages established in this Declaration. The insurance premiums shall be a Common Expense. This Section is without prejudice to the right of each Unit Owner to insure his or her own Unit for his or her benefit. The Manager, Board of Directors or Association shall satisfy at least the following minimum requirements:

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

- b) Flood Insurance. If any part of the Project's improvements are in a Special Flood Hazard Area -- which is designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map (FIRM) -- the Association shall obtain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any common element buildings and any other common property. The Unit Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.
- c) Liability Insurance. A public liability policy covering the Common Areas and Facilities, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.
- d) Directors and Officers Insurance. A director's and officer's liability or errors and omissions policy, if reasonably available, with at least One Million (\$1,000,000) Dollars in coverage.
- e) Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Board of Directors to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:
- (1) Agents. Furthermore, where the Board of Directors or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Board of Directors or the Association.
  - (2) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Board of Directors' best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Board of Directors, the Association, or the management agent as

the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units, plus reserve funds.

- (3) Quality of Coverage. The bonds required shall meet the following additional requirements: (a) they shall name the Board of Directors, the Owners Association, and the Property Manager as obligee; (b) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense; (c) the premiums on all bonds required herein for the Board of Directors and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Board of Directors or the Association as part of the Common Expenses; and (d) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten (10) days' prior written notice to the Board of Directors and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, and FNMA.
- f) Earthquake Insurance shall not be required unless requested by at least Seventy five percent (75%) of the Members of the Association.
- g) Miscellaneous Items The following provisions shall apply to all insurance coverage:
- (1) Quality of Carrier. A "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance reports -- International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service -- if the carrier is issuing a master policy or an insurance policy for the common elements in the Project.
- (2) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Unit Owners of THE SPRINGS AT HARVEST HILLS CONDOMINIUM, for the use and benefit of the individual Owners."
- (3) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an

Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

- (4) **Beneficiary.** In any policy covering the entire Project, each owner and his or her Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities and Facilities.
- (5) **Certificate of Insurance.** Evidence of insurance shall be issued to each Owner and Mortgagee upon request.
- (6) **Mortgage Provisions.** Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without the insurer endeavoring to give at least ten (10) days prior written notice to the Association and to each Mortgagee.
- (7) **Miscellaneous Provisions.** Each insurance policy shall contain at least the following additional miscellaneous items: (a) A waiver of the right of a subrogation against Owners individually; and (b) A provision that the insurance is not prejudiced by any act or neglect of any individual Owner.
- (8) **Prompt Repair.** Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his or her Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.
- (9) **Disbursement of Proceeds.** Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Unit, and may be enforced by them.
- (10) **Special Endorsements.** Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and/or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes

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

- (11) Restrictions on Policies No insurance policy shall be maintained where:
- i. Individual Assessments Prohibited. Under the terms of the carrier's charter, Bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Board of Directors, the Association, FNMA, or the designee of FNMA.
  - ii. Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's Board of Directors, policyholder, or member; or
  - iii. Mortgagee Limitation Provisions. The policy includes any limitation clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board of Directors, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.
- (12) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Board of Directors or Owners to obtain and maintain insurance coverage, in amounts and in such forms as the Board of Directors or Association may deem appropriate from time to time.
- (13) Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the Unit Owner, then the Association shall be responsible for the deductible.



- h) Adjusting Claims. The Board of Directors has the authority to adjust claims and, if the claim may be filed with the Unit Owner's or renter's insurance carrier, may require from the prospective claimant's insurance company a formal notice of rejection and an unconditional denial of the claim or its equivalent before submitting the claim to the Association's insurance company, particularly if (1) it risks cancellation of the Association's insurance, or (2) the problem occurred in the Unit, or (3) was caused by the claimant, or (4) the claim is legally or primarily the responsibility of the claimant, and (5) there is a substantial likelihood that the claim will be covered by the Owner's or renter's insurance company.

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

- a) Definitions. Each of the following terms shall have the meaning indicated:
- (1) "Substantial Destruction." shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.
  - (2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.
  - (3) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.
  - (4) "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.
  - (5) "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached a state of obsolescence, whether caused by damage, defect or disrepair, such that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.
  - (6) "Partial Obsolescence" shall mean any state of obsolescence, whether caused by damage, defect or disrepair, which does not constitute Substantial Obsolescence.

- (7) "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.
- (8) "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.
- (9) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, reserves held for major repairs and replacements or Capital Improvements and any other uncommitted funds of the Board of Directors or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Unit in which they are interested.
- b) Determination by Board of Directors. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Board of Directors shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Board of Directors shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Board of Directors may retain and rely upon one or more qualified appraisers or other professionals.
- c) Restoration of the Project. Restoration of the Project shall be undertaken by the Board of Directors promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence. Restoration where no vote is required shall be paid for by using any available insurance proceeds and condemnation proceeds and, to the extent other sources are not available, reserves for major repairs and replacements. Such restoration shall be accomplished without significant delay and without further Owner vote on a revised budget or approval of a scope of the proposed restoration. Restoration of the Project shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one (51%) percent of the undivided

ownership interest in the Common Areas and Facilities and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

- d) Notices of Destruction or Obsolescence. Within thirty (30) days after the Board of Directors has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.
- e) Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Board of Directors or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas and Facilities. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.
- f) Inadequate Restoration Funds. If the cost of Restoration exceeds Available Funds, the Board of Directors may elect to make a special assessment in accordance with Article III, Section 23 above to pay for the deficiency.
- g) Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities and Facilities shall be immediately reallocated to the remaining Units.
- h) Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, condominium Ownership under this Declaration and the Condominium Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board of Directors to the Owners in proportion to their respective undivided interests in the Common Areas and Facilities. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

- i) Authority of Board of Directors to Represent Owners in Condemnation or to Restore or Sell. The Board of Directors, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities and Facilities.
- j) Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.
- k) Restoration Power. The Board of Directors, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.
- l) Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.
- m) Termination of Legal Status. Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Unit Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association and by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Units that are subject to mortgages held by eligible holders. The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Units. However, implied approval may be assumed when an Eligible Mortgage holder (except (where appropriate) the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA)) fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

35. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction

from Owners who collectively hold the required percentages, subject to the following conditions:

- a) Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and
- b) Change In Ownership. Any change in Ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose; and
- c) Notice. If approved, written notice of the approval must be given to all Unit Owners at least ten (10) days before any action is required by them.

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

- a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Unit for such unpaid Assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit the lien of any Assessments becoming due thereafter.
- b) Books and Records Available for Inspection. The Board of Directors or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, Bylaws, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Board of Directors and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.
- c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

- d) **Management Contracts.** In addition to the requirements of Section 17 regarding management contracts, any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board of Directors other than longer term contracts relating to warranty, inspection and repair of improvements shall provide, or be deemed to provide hereby, that:
- (1) Either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and
  - (2) No contract may be for an initial term greater than one (1) year.
- e) **Eligible Mortgagee Designation.** Upon written request to the Board of Directors or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:
- (1) **Condemnation Loss or Award.** Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.
  - (2) **Delinquency.** Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.
  - (3) **Lapse of Insurance.** Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board of Directors or the Association.
  - (4) **Consent Required.** Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.
- f) **Approval of Proposed Action or Transaction.** Any Mortgagee who receives, by certified or registered mail, a written request, with a return receipt requested, to approve any act, transaction or amendment to the Declaration, and who does not return a negative response within thirty (30) days shall be deemed to have approved such request; provided,

however and anything to the contrary notwithstanding, so long as Declarant is in control of the owner's association, such action or transaction must be approved in writing by the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, " 36.4357(b)(4) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), by such agencies.

37. Amendment. This Declaration may be amended as follows:
- a) Amendments by Declarant. Until after the termination of the Declarant's Period of Control, this document and the Condominium Plat may be amended by the execution by Declarant of an instrument amending the same without any additional approval required, and no other amendment shall be valid or enforceable without the Declarant's prior written consent.
  - b) Consent of the Owners. After the termination of the Declarant's Period of Control, the affirmative vote of at least sixty seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration or the Condominium Plat. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board of Directors. In such instrument the Board of Directors shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.
  - c) Protection of Declarant Rights. An amendment shall not terminate or decrease any unexpired development right, or Period of Declarant Control unless the Declarant approves or consents in writing.
  - d) Execution of Amendments. An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder of Utah County, Utah. An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved and the Declarant if the Declarant's consent is also required, and when the amendment has been recorded in the office of the County Recorder of Utah County, Utah.
  - e) Consent of Eligible Mortgagee. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any

amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities shall be required to add to or amend any material provision of this Declaration or the Condominium Plat which establishes, provides for, governs, or regulates any of the following: (1) voting rights; (2) increases in assessments that raise the previously assessed amount by more than 50%, assessment liens, or the priority of assessment liens; (3) reductions in reserves for maintenance, repair, and replacement of the Common elements; (4) insurance or fidelity bonds; (5) limitations and restrictions on the right to use of the Common Areas and Facilities; (6) responsibility for maintenance and repairs; (7) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (8) the boundaries of any Lot; (9) the percentages of ownership interest in the Common Areas and Facilities; (10) convertibility of a Lot into Common Areas and Facilities or Common Areas and Facilities into a Lot; (11) the imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot; (12) express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and (13) the requirement that the Project be professionally managed rather than self managed. Any addition or amendment shall not be considered material for purposes of this Paragraph b) if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Condominium Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Board of Directors or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Condominium Plat or the termination of the legal status of the Project. If such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

38. Due Process Requirements; Notice of Hearing; Opportunity to be Heard. In the event of a claimed material violation of the Project Documents or the Act, no citation or suspension shall be imposed without the Board of Directors first giving the alleged violator written notice of the violation and an opportunity to be heard by the Board of Directors. Provided, however, nothing herein shall be construed to prevent the Board of Directors from (a) immobilizing, towing or impounding a motor vehicle in violation of the parking rules and regulations for which no additional notice is required, or (b) making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice to the Unit Owner or Occupant and giving them an opportunity to be heard.



39. Declarant's Sales Program. Anything to the contrary notwithstanding, until Declarant has sold all Units owned by it, or the expiration of seven (7) years following the date on which the Declaration is filed for record in the Office of the Utah County Recorder, whichever first occurs, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay his or her portion of the Common Expenses or other Assessments, except as herein otherwise provided. Neither the Owners, the Association, nor the Board of Directors shall interfere with the completion of improvements and sale of Declarant's Units, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Units owned by Declarant:

- a) Sales Office and Model Units. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Units at any one time. Such office and/or models may be one or more of the Units owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;
- b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.
- c) Common Areas and Facilities Use. Declarant shall have the right to use the Common Areas and Facilities of the Project as a sales office and in any other way necessary to facilitate sales.
- d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the end of Period of Declarant's Control, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

40. Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (a) seven (7) years after the date of recording the Declaration, or (b) such time as Declarant chooses, neither the Association nor the Board of Directors shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas and Facilities as originally created or constructed by Declarant.

41. Completion Obligation; Disclaimer of Warranties. Declarant hereby covenants in favor of each Owner that within two (2) years from the date of any contract of sale:

- a) Units. Each Unit which an Owner has contracted to purchase, and the Building within which such Unit is contained or is to be contained, and the appurtenant Limited Common Areas and Facilities and the Common Areas and Facilities shall be substantially constructed, and ready for use or occupancy (as the case may be); and
- b) Common Areas and Facilities. There shall be substantially completed and usable as part of the Common Areas and Facilities all planned landscaping, green space, sidewalks, parking facilities, roads, fences, outdoor lighting, and utility lines and conduits adjacent to the Unit or Building in which a Unit is located, and necessary for its use. The foregoing covenant shall not be deemed to be violated by the construction of the Project in phases or, within a phase, the construction of Buildings and portions of the Common Areas and Facilities at different times.
- c) Disclaimer of Warranties. The covenant to complete the Unit, Building and associated Common Areas and Facilities shall not constitute a warranty by Declarant with respect to construction quality or conformance with plans, specifications or applicable codes. Each Owner and the Association shall have the benefit of only such express warranties as may have been granted by the contractor that constructed the applicable Unit and Building. Each prospective buyer of a Unit shall have the right and obligation to undertake whatever inspections of the Project Buyer so desires in order to assure the prospective buyer as to the quality and condition of the Project, the Unit and the Building. Owner acknowledges by closing on the purchase of the Property that (i) Owner has caused such independent examinations to be made as Owner deems necessary and has made Owner's own full examination and determination of the condition of the Project, the Unit and the applicable Building and the suitability thereof, (ii) except with respect to any express representations and warranties of the contractor, the Declarant has made no representation as to the value, character, quality, quantity, or condition of the Property, the Unit or the Building or the future marketed sales price for or value or income potential of the Unit on which Owner has relied, and (iii) except with respect to the express representations and warranties and covenants of such contractor, the Owner owns the Unit and occupies the Building and shares in the ownership and use of the Common Areas and Facilities with other Owners on an "As Is" and "Where Is" basis. Further the Association acknowledges and agrees that except with respect to the express representations and warranties and covenants of such contractor, the Association takes control of the operation and maintenance of the Common Areas and Facilities on an "As Is" and "Where Is" basis.

Each Owner and the Association further acknowledge and agree that (i) the as-built location of utility lines, utility improvements (such as but not limited to junction boxes, transformers or pedestals) and sewer taps, may vary from locations shown on the standard plans, (ii) the character and uses of property surrounding and in the vicinity of the Project may change, and there may be changes in the views from the Unit, (iii) there may be minor deviations in the Unit from the standard plans or models and from illustrations and designs shown in promotional materials, (iv) floor plans, maps, landscaping and elevation renderings included within promotional brochures and Project information may not have been drawn to scale and any square footage or dimensions shown in such materials are only approximations, (v) some exterior and interior items shown in the Declarant's sales models are upgrades over standard Unit features, (vi) Declarant reserves the right to make changes in the design of the Project and in the standard plans, specifications, materials, size and location of all Project improvements, and to substitute materials, fixtures and appliances of an equal or better quality (as determined by Declarant in the exercise of Declarant's discretion), (vii) there may be minor variations from the plans as to the location of the interior walls of the Residence and in the exterior wall locations and floor elevations from those shown on the Record of Survey Map, and (viii) construction activity (including but not limited to noise and the transportation of labor, material and equipment) may continue in the Project after occupancy of Units and may cause an inconvenience to Owner. Seller, and the contractor, except to the extent set forth in an express written warranty of the contractor, each disclaim and shall have no liability or responsibility in connection with the foregoing and each Owner and the Association hereby releases Declarant and the contractor (except to the extent of an express written warranty) from any and all responsibility, obligation, or liability for the occurrence of any of the foregoing items. As between Declarant and each Owner, the issuance of a certificate of occupancy for the Unit and Building by the City shall constitute conclusive evidence that the Unit and Building have been constructed in substantial compliance with the standard plans and specifications and that Declarant's construction obligations have been fully satisfied, subject to any punch-list items and the contractor's written warranty referred to above.

Notwithstanding any of the foregoing, none of the following shall be the responsibility of Declarant to correct or shall be deemed to be a defect or covered by any warranty of a contractor: (v) any condition arising from the use of the Unit or Common Areas and Facilities including without limitation damage arising from condensation, mold, lack of ventilation, lack of maintenance or customary care, use of improper cleaning materials or techniques, (w) cracking of concrete slabs and walls, caulk, grout and other materials and the effects of expansion and contraction, (x) changes in materials or colors caused by exposure to heat, cold, and sunlight, (y) failure of mechanical equipment to achieve desired temperatures when

outside conditions are exceptionally hot or cold, or (z) damages or losses arising from any present or future environmental condition including without limitation soil conditions, radon, pollution of water or soil regardless of source, power lines or changes in the use of surrounding properties.

The warranties contained in any written warranty by the contractor constructing the buildings, units and Common Areas and Facilities are the only warranties of any kind whatsoever, express or implied. To the extent permitted by law, Declarant hereby disclaims (and each Owner and the Association hereby waive and release Declarant from all liabilities in connection with) (i) all implied warranties of merchantability, fitness for a particular purpose, habitability or workmanship. Each Owner and the Association agrees that any liability, whether in contract, tort, warranty or otherwise, is limited to the remedy of repair, replacement or payment as set forth in the contractor's written warranty. No steps taken by any Owner or the Association to correct defects or alleged defects shall extend the warranty period beyond the period set forth in the contractor's written warranty. Under no circumstances shall Declarant or the contractor be liable for any special, incidental or consequential damages, including any claims for personal injury, property damage, or emotional distress.

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

43. Mortgagee Approval. Until the termination of the Period of Declarant's Control, the Declarant shall not annex additional properties or amend the Declaration without the prior written consent (where appropriate) of the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA).

44. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select the Members of the Board of Directors and may elect to transfer the management of the Project to a Board of Directors elected by the Owners. Upon the termination of the Period of Declarant's Control, or sooner if the Declarant so elects, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of the Board of Directors to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of

management. Moreover, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Board of Directors.

45. Working Capital Fund. A working capital fund shall be established by the Declarant equal to or greater than two (2) months' Assessments for each Unit. Each Unit's share of the working capital fund shall be collected and transferred to the Board of Directors at the time of closing of the sale of each Unit by Declarant. Notwithstanding the foregoing, the contribution to the working capital fund for each unsold Unit shall be paid to the Board of Directors at the time such Unit is first occupied for residential purposes or a certificate of permanent occupancy is issued, whichever first occurs. With respect to each Unit for which the Declarant pays the contribution to the working capital fund, the Declarant shall be reimbursed for such contribution by the buyer of such Unit at the time of closing. The purpose of the working capital fund is to insure that the Board of Directors will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of the Project. Sums paid into the working capital fund are not to be considered as advance payments or regular monthly payments of Common Expenses. Thereafter, the Board of Directors may continue the working capital fund by charging a reasonable transfer or impact fee when Units are sold or rented.

46. Separate Taxation. Each Unit and its percentage of undivided interest in the Common Areas and Facilities shall be considered to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the Building or Buildings, the property nor any of the Common Areas and Facilities may be considered a parcel for tax purposes.

47. Enforcement and Right to Recover Attorneys Fees. Subject to reasonable compliance herewith by the Manager and the Board of Directors, each Unit Owner shall reasonably comply with the covenants, conditions, and restrictions as set forth herein or in the deed to his or her Unit and with the Bylaws and/or house rules and with the administrative rules and regulations drafted pursuant hereto, as any of the same may be lawfully amended from time to time, and failure to comply shall be ground for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association, Manager or Board of Directors on behalf of the Unit owners, or in a proper case, by an aggrieved Unit Owner.

Should the Association, Manager or Board of Directors be required to take action to enforce the Declaration, Bylaws or any administrative rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all additional charges, including a reasonable attorneys fee, which may arise or accrue (collectively "Additional Charges"). In addition, the Board of Directors may impose the following sanctions after proper notice and the opportunity to be heard:

- a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit;

- b) suspending an Owner's right to vote;
- c) suspending any Person's right to use any of the recreational facilities; provided, however, nothing herein contained shall authorize the Board of Directors to limit ingress or egress to or from a Unit;
- d) exercising self-help or taking action to abate any violation of the Project Documents in a non-emergency situation;
- e) exercising self-help in any emergency situation (specifically including but not limited to the towing of vehicles that are in violation of the parking rules);
- f) requiring an Owner at his or her sole expense to remove any structure or improvement in the Common Areas and Facilities, and upon the failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the property and remove the violation and restore the property to its original condition, and such action shall not be deemed a trespass;
- g) levying Individual Assessments or Additional Charges to cover costs incurred by the Association to bring a Unit or Unit Owner into compliance.
- h) terminate an owner's right to receive utility services paid as a common expense
- i) in the case of delinquent assessments or fines, demand a rental tenant pay to the association all future lease payments due the owner.

48. Agent for Service of Process. The President of the Association is the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent is Michael Johnson and the initial office of the Association is 461 W. Parkland Drive, Sandy, Utah 84070.

49. Annexation of Private Amenities. If reasonably available, the Association may purchase and operate for the benefit of the Unit Owners any Private Amenity and its facilities, infra-structure and easements as provided for or identified herein or in the Condominium Plat or, in the alternative, contract separately for such services.

50. Combination of Units. An owner of two or more adjoining Units shall have the right upon approval of the Board of Directors and the mortgagees of said Units, to combine one or more adjoining Units or portions thereof and to alter or amend the Declaration and Map to reflect such combination.

- a) Such amendments may be accomplished by the unit owner recording an amendment or amendments to this Declaration, together with an amended map or maps containing the same information with respect to the altered units as required in the initial declaration and map with respect to the initial units. All costs and expenses required in such amendments shall be borne by the unit owner desiring such combination.
- b) All such amendments to the declaration and map must be approved by attorneys employed by the Board of Directors to insure the continuing legality of the declaration and the map. The cost of such review by the attorneys shall be borne by the person wishing to combine the units.
- c) Any amendments of the declaration or map pursuant to this paragraph 20 shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the Common Areas and Facilities and Facilities which are appurtenant to the units involved in the alterations. The remaining combined unit, if two or more units are totally combined, will acquire the total of the percentage of undivided interest in the Common Areas and Facilities and Facilities appurtenant to the units that are combined as set forth in Exhibit B. If a portion of one unit is combined with another, the resulting units shall acquire a proportionate percentage of the total undivided interest in the Common Areas and Facilities and Facilities of the units involved in the combination on the basis of area remaining in the respective, combined units. The percentage of undivided interest in the Common Areas and Facilities and Facilities appurtenant to all other units shall not be changed. All such amendments must, in all instances, be consented to by the Board of Directors and also all other persons holding interest in the units affected. The consent of other unit owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the Common Areas and Facilities of the other unit owners remain unchanged.

51. Dispute Resolution and Limitation on Litigation. The term "Bound Party" shall refer to each of the following: (i) the Association, (ii) Declarant, (iii) all persons who become subject to this Declaration from time-to-time for such period as is necessary to resolve "Claims" (as defined below) arising under the Declaration, (iv) any contractor providing a written warranty to any Unit Owner and/or to the Association for the duration of the warranty period and thereafter only to the extent necessary to resolve Claims properly and timely made during the warranty period and (v) any architect, engineer, contractor, subcontractor or other potential defendant with respect to any Claim who voluntarily agrees to become a "Bound Party" in connection with a particular Claim subject to any limitations in the agreement of that party voluntarily to become a Bound Party. The Bound Parties agree to encourage the amicable resolution of disputes involving the Project, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party

involving the properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in subsection (a) below, shall be resolved using the procedures set forth in subsection (b) below in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

- a) Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of the foregoing paragraph:
- (1) any suit by the Association against any Bound Party to enforce the Declaration or collect Assessments;
  - (2) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the restrictive covenants;
  - (3) any suit between Owners (other than Declarant or a contractor with a warranty) seeking redress on the basis of a Claim which would constitute a cause of action under the laws of the State of Utah in the absence of a claim based on the Declaration, Bylaws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00; and
  - (4) any suit involving two or more persons where all of the persons are not Bound Parties (provided, however, that all steps set forth below prior to the filing of any suit must be followed by all Bound Parties prior to the filing of such a suit).

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in subsection (b) below, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 49(b)(3) shall require the approval of the Association.

- b) Mandatory Procedures for All Other Claims. All claims other than Exempt Claims shall be resolved using the following procedures:
- (1) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim ("Notice"), stating plainly and concisely:



- (a) The nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim;
- (b) The basis of the Claim (i.e., the provision of the Declaration, Bylaws, the Articles or rules or other authority out of which the Claim arises);
- (c) What Claimant wants respondent to do or not to do to resolve the Claim; and
- (d) That Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(2) Negotiations, Inspection and Repair.

- (a) Each Claimant and Respondent ("Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Where a construction claim is involved, such each affected Party shall permit full inspection and evaluation of any alleged defective construction by Declarant, the contractor and any third parties designated by either the contractor or the Declarant. If, after such evaluation, the contractor offers to correct the condition that is the subject of the Claim, each affected Party shall permit the contractor to conduct such repairs as may reasonably be designed to correct the condition that is the basis for the Claim.
- (b) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board of Directors may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(3) Mediation.

- (a) If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be

agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of the Court, or such other independent agency providing similar services upon which the Parties may mutually agree.

- (b) If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings.
- (c) If the Parties do not settle the Claim with thirty (30) days after submission of the matter to the mediation process, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.
- (d) Each party shall, within five (5) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(4) Final and Binding Arbitration.

- (a) If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within fifteen (15) days of Termination of Mediation, the Claimant shall

have fifteen (15) additional days to submit the Claim to arbitration in accordance with the American Arbitration Association Rules of Arbitration or mutually acceptable equivalent rules or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings.

- (b) This subsection (4) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Utah. The arbitration award ("Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Utah.
- (5) Allocation of Costs of Resolving Claims. Each Party shall bear all of its own costs incurred prior to and during the proceedings described herein, including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediators or arbitrators, unless otherwise agreed upon or ordered.
- (6) Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation or mediation in accordance herewith and any Party thereafter fails to abide by the terms of such Agreement, or if the Parties agree to accept an Award rendered following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth herein. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

52. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective

grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

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

54. Severance. If any part, term or provision of this Declaration is deemed to be illegal or in conflict with any local, state or federal laws, the rights and obligations of the parties shall be construed and enforced as if the Declaration did not contain such part, term or provision, and the remaining portions or provisions of this Declaration shall not be affected.

55. Government Lenders, Guarantors and Insurers. If any covenant, condition, restriction, part, term or provision of this Declaration is deemed to be inconsistent, incongruent or in conflict with (the "Inconsistent Provision" ) any condominium approval guidelines of the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, 36.4357(b)(4) for the financing, insuring or the guaranty of the Property, or any part thereof (the "Required Provision" ), and such financing, insuring or guarantying has been provided and is an issue, then the rights and obligations of the parties shall be construed and enforced as if the Declaration did not contain such Inconsistent Provision, and as if it did contain the Required Provision, which shall be and is hereby incorporated herein by this reference, anything to the contrary notwithstanding.



## LEGAL DESCRIPTION OF LAND

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

Commencing at a point located South 00°34'14" West along the Section line 1589.08 feet and East 404.64 feet from the NorthWest corner of Section 11, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence along the arc of a 234.00 foot radius curve to the left 48.42 feet (chord bears North 67°42'04" East 48.33 feet); along the arc of a 1722.34 foot radius curve to the left 369.69 feet (chord bears North 55°37'29" East 368.98 feet); thence along the arc of a 147.54 foot radius curve to the right 105.25 feet (chord bears North 69°54'46" East 103.04 feet); thence East 371.75 feet; thence South 416.03 feet; thence North 88°59'58" West 786.13 feet; hence North 12°45'48" West 143.80 feet to the point of beginning.

Area: 274,801 sq. ft. 6.31 acres

**EXHIBIT B**

(Declaration of Condominium for The Springs at Harvest Hills Condominiums)

**PERCENTAGES OF UNDIVIDED OWNERSHIP INTEREST**

<b>Unit No.</b>	<b>Par Value</b>	<b>Percentage of Ownership</b>
1	0.9259	0.9259
2	0.9259	0.9259
3	0.9259	0.9259
4	0.9259	0.9259
5	0.9259	0.9259
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107	0.9259	0.9259
108	0.9259	0.9259

**EXHIBIT C**  
**BYLAWS**  
**FOR THE SPRINGS AT HARVEST HILLS**  
**CONDOMINIUM OWNERS ASSOCIATION**

**ARTICLE I**  
**PLAN OF UNIT OWNERSHIP AND INCORPORATION**

1. **Submission.** These are the Bylaws referred to in the foregoing Declaration of Condominium of **THE SPRINGS AT HARVEST HILLS CONDOMINIUMS** (the "Declaration"), which is located in County of Utah, State of Utah. These Bylaws shall govern the administration of the Project and the Association.
2. **Organizational Form.** The Association is incorporated under the laws of the State of Utah and these Bylaws shall constitute the Bylaws of the corporation.
3. **Office and Registered.** The initial Registered Agent shall be Michael Johnson, 461 W. Parkland Drive, Sandy, UT 84070. However, after transfer of management and control of the Association is made by the Declarant to the members of the Association, the Registered Agent and the Registered Office shall be designated by the Board of Directors.

**ARTICLE II**  
**ASSOCIATION**

1. **Composition.** The association of unit owners is a mandatory association consisting of all Owners.
2. **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board of Directors from time to time and stated in the notice of meeting.
3. **Annual Meetings.** Shall be held for the entire Membership during the same month for the purposes of electing the Board, reviewing the past year's financial reports, and reviewing the upcoming year's proposed budget. The first Annual Meeting shall be held within 60 days of 95% of the units conveyed to owners other than the Declarant.
4. **Special Meetings.** Special meetings of the members may be called at any time by the President or the Board, or upon written request of fifty percent (50%) of the current members. The call for such meeting shall be in accordance with these bylaws.
5. **Notice of Meeting.** It shall be the duty of the Secretary or their delegated representative to hand deliver or mail to each owner at his or her last known address, by regular U.S. mail postage prepaid, a notice of (a) each annual meeting of the Association

not less than fifteen (15) and not more than sixty (60) days in advance of such meeting. The notice shall state the purpose, day, date, time and place of the meetings. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

6. Qualified Voters. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she is in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid his or her share of the Common Expenses and all Assessments and/or Additional Charges due.

7. Proxies. The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically (a) if the Owner attends the meeting in person, (b) it is revoked in writing and written notice of the revocation is given to the Secretary of the Association prior to the meeting, and (c) upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Association prior to the meeting. Only individual Owners or the legal representative of an institutional Owner may be proxies.

8. Quorum. Those Owners present, either in person or by proxy, at the rescheduled meeting shall constitute a quorum for the adoption of decisions. The vote of the Owners representing a majority of the members of the Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

9. Order of Business. The order of business at all meetings of the Association shall be as follows (unless otherwise changed by the Board):

- a. roll call;
- b. proof of notice of meeting;
- c. reading of minutes of preceding meeting;
- d. reports of officers;
- e. report of Board of Directors, if any;
- f. election of inspectors of election, if applicable;
- g. election of Board of Directors Members, if applicable;
- h. unfinished business; and
- i. new business.

10. Conduct of Meeting. The President shall, or in his or her absence the Vice-President, preside over all meetings of the Association; and the Secretary

shall keep the minutes of the meeting as well as record of all transactions occurring thereat.

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ARTICLE III  
BOARD OF DIRECTORS

1. Powers and Duties. The affairs and business of the Association shall be managed by the Board of Directors consisting of not less than three (3) but not more than five (5) Unit Owners. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things necessary to operate and maintain the Project. The Board of Directors shall have the power from time to time to adopt any Rules and Regulations deemed proper for the exercise of its management powers. The Board of Directors may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Board of Directors shall be responsible for at least the following:

- a) Preparation of an annual budget, capital asset table and reserve account analysis;
- b) Establishing the Assessment of each Owner and Unit;
- c) Maintaining the Common Areas and Facilities;
- d) Managing employees and personnel;
- e) Collecting and depositing the Assessments;
- f) Making, amending, and enforcing the Rules and Regulations;
- g) Establishing bank accounts;
- h) Enforcing by legal means the Project Documents;
- i) Obtain insurance;
- j) Keeping books and records with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Project, specifying the maintenance and repair expenses of the Common Areas and Facilities and any other expenses incurred. Said documents, books, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set

and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon a resolution approved by a majority of the Members of the Association, shall be formally Audited by an outside auditor employed by the Board of Directors who shall not be a Occupant of the Project or an Owner therein. The cost of such Audit shall be a Common Expense. Copies of books and records, financial statements, reports, compilations, and Audits shall be supplied to any first mortgagee of any Unit in the Project who requests the same in writing from the Secretary. A mortgage holder, at its expense, may have an Audited financial statement prepared at any time;

- k) Providing common utility services;
- l) Doing such other things and acts necessary to accomplish the foregoing and not inconsistent with the Declaration or Bylaws, or to do anything required by a proper resolution of the Board of Directors or Association.

2. Composition of Board of Directors. The Board of Directors shall be composed of an uneven number of not less than three (3) but not more than five (5) Unit Owners

3. Election and Term of Office of Board of Directors Members Except as provided below with respect to the initial Board of Directors members, the term of office of Board of Directors Members shall be two (2) years. At the expiration of the member's term, a successor shall be elected. In the initial election of Board of Directors members after the Declarant releases control of the Project, the Board of Directors member receiving the fewest number of votes shall serve for a term of one (1) year only. Thereafter, persons subsequently elected to take that Board of Directors member's place will serve terms of two years.

4. First Meeting. The first meeting of the members of the Board of Directors shall be immediately following the annual meeting of the Association or at such other time and place designated by the Board of Directors.

5. Regular Meetings. Regular meetings of the Board of Directors shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Board of Directors, but not less often than quarterly.

6. Special Meetings. Special meetings of the Board of Directors may be called by the President, Vice President or a majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. Mail postage prepaid (three (3) days shall be added for mailing and notice shall be deemed properly given as of the third day) or by telephone, and such notice shall

state the time, place and purpose of the meeting. Any meeting attended by all members of the Board of Directors shall be valid for any and all purposes.

7. Waiver of Notice. Before or at any meeting of the Board of Directors, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Board of Directors shall constitute a waiver of notice. If all the members are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

8. Board of Directors' Quorum. At all meetings of the Board of Directors, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Board of Directors members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no longer than two days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

9. Vacancies. Vacancies in the Board of Directors caused by any reason other than expiration of the regularly scheduled term of a particular director or removal of a director by a vote of the Association shall be filled by vote of the majority of the remaining members of the Board of Directors at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board of Directors; and each person so elected shall be a director for the remainder of the term of the director so replaced. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

10. Removal of Board of Directors Member. A member of the Board of Directors may be removed with or without cause, and his or her successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting.

11. Conduct of Meetings The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a Minute Book of the Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

12. Open Meeting Policy. All Board of Directors meetings shall be open to all voting members, but attendees other than members of the Board of Directors may not

participate in any discussion or deliberation unless a majority of a quorum requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

13. Action May Be Taken Without A Meeting. Any action to be taken at the meeting of the Board of Directors or any action that be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting for the action so taken, shall be signed by all the members of the Board of Directors. An explanation of the action taken shall be posted at a prominent place or places within the Common Areas and Facilities with three (3) days after the written consents of all of the members of the Board of Directors have been obtained.

14. Executive Session. The Board of Directors, with approval of a majority of a quorum, may adjourn a meeting and reconvene an executive session to discuss and vote upon personnel matters, litigation or threatened litigation in which the Association is or may become involved, and orders of business of a privileged, confidential, sensitive or similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session.

#### ARTICLE IV OFFICERS

1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors and who must be members of the Board of Directors. The Board of Directors may appoint assistant secretaries and such other officers as in its judgment may be necessary. Two or more offices may be held by the same person, except that the President shall not hold any other office.

2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of each Board of Directors immediately following the annual meeting of the Association and shall hold office at the pleasure of the Board of Directors. Any vacancy in an office shall be filled by the Board of Directors at a regular meeting or special meeting called for such purpose.

3. Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors, and his or her successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purposes.

4. President. The President shall be the chief executive officer; he or she shall preside at meetings of the Association and the Board of Directors shall be an ex officio member of all Board of Directors; he or she shall have general and active

management of the business of the Board of Directors and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the use of president of a corporation organized under the laws of the State of Utah.

5. Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors or the President shall prescribe. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint a member of the Board of Directors to do so on an interim basis.

6. Secretary. The secretary shall attend all meetings of the Board of Directors and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him for that purpose and shall perform like duties for Board of Directors when required. He shall give, or cause to be given, notices for all meetings of the Association and the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board of Directors including resolutions.

7. Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Managing Agent, and with the assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Board of Directors. He shall disburse funds as ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all his or her transactions as Treasurer and of the financial condition of the Project.

#### ARTICLE V FISCAL YEAR

The fiscal year of the Association shall be the calendar year consisting of the twelve (12) month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board of Directors should it be deemed advisable or in the best interests of the Association.

#### ARTICLE VI



## INVESTMENT OF COMMON FUNDS

Common funds may only be deposited into institutions which are federally insured.

ARTICLE VII  
AMENDMENT TO BYLAWS

1. Amendments. These Bylaws may be modified or amended either (a) by the affirmative vote of a majority of the members of the Association or (b) pursuant to a written instrument of consent duly executed by a majority of the members of the Association; provided, however, all of the written consents must be obtained within a ninety (90) day period and, so long as Declarant is in control of the owner's association, must be approved in writing by the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, "36.4357(b)(4) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), by such agencies.

2. Recording. An amendment to these Bylaws shall become effective immediately upon recordation in the Office of the County Recorder of Utah County, State of Utah.

ARTICLE VIII  
NOTICE

1. Manner of Notice. All notices, demands, bills, statements, or other communications provided for or required under these Bylaws (except as to notices of Association meetings which were previously addressed in Article II of these Bylaws) shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage pre-paid, a) if to an Owner, at the address of his or her Unit and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Board of Directors or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Declaration.

ARTICLE IX  
COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Conflict. These Bylaws are subordinate and subject to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration. In the event of any conflict between these Bylaws and the Declaration, the provision of the Declaration shall control.
2. Waiver No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.
3. Captions. The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.
4. Interpretation Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine; and the term "shall" is mandatory while the term "may" is permissive.
5. Severability The invalidity of any one or more phrases, sentences, subparagraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this document should be invalid or should operate to render this document invalid, this document shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of THE SPRINGS AT HARVEST HILLS CONDOMINIUM OWNERS ASSOCIATION, a Utah nonprofit corporation ("Association"); and

2. The foregoing Bylaws constitute the original Bylaws of the Association duly adopted by the Organizational Consent of its Board of Directors dated \_\_\_\_\_, 200\_\_.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Secretary