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After recordation, return to:

Georgetown Development Inc.  
2230 North University Parkway, Suite 7G  
Provo, Utah 84604

ENT 25058:2004 PG 1 of 27  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2004 Mar 04 2:31 pm FEE 83.00 BY LJ  
RECORDED FOR GEORGETOWN DEVELOPMENT, INC

**DECLARATION OF PROTECTIVE EASEMENTS,  
COVENANTS, CONDITIONS AND RESTRICTIONS  
(Including Owner Association Bylaws)**

**HEIRLOOM COTTAGES**

**Expandable Planned Unit Development**

**American Fork, Utah County, Utah**

**This Declaration** of Protective Easements, Covenants, Conditions and Restrictions (the "Declaration") is made this 19 day of FEBRUARY, 2004, by **GEORGETOWN DEVELOPMENT, INC., a Utah corporation ("Declarant")**, in its capacity as the owner and developer of **Heirloom Cottages, an expandable planned unit development in American Fork, Utah.**

**ARTICLE I**

**PURPOSE AND EFFECTUATION**

1.01 **Purpose.** The purpose of this instrument is to provide for the preservation of the values of both Lots and Common Areas within Heirloom Cottages, an expandable planned unit development in American Fork, Utah, (the "Development"), and for the maintenance of the interior road, driveways, sidewalks, parking, amenities, open spaces, landscaping, trees and all other Common Areas therein.

1.02 **Effectiveness.** From and after the effective date hereof: (a) Each part of the Development and each Lot and Unit lying within the boundaries of the Development shall constitute but constituent parts of a single expandable planned unit development; (b) The Development shall consist of the Lots and of the Common Areas which are described and depicted on the Plat, together with such additional Lots and Common Areas as may come into existence pursuant to the provisions hereof relating to annexation or expansion of the Development; (c) The Declaration for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions hereof; and (d) The initial Plat of the Development shall consist of the instrument identified as **Plat "A", Heirloom Cottages, An Expandable Planned Unit Development, American Fork City, Utah County, Utah**, and thereafter recorded concurrently herewith in the Public Records as the same may thereafter be amended.

**ARTICLE II****DEFINITIONS**

When used in this Declaration each of the following terms shall have the meaning indicated:

- 2.01 **Additional Land** shall, at any point in time, mean all of the land in Utah County, State of Utah, set forth and described in Exhibit A, attached hereto and made a part hereof.
- 2.02 **Articles** shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed in the Office of the Division of Corporations and Commercial Code, State of Utah, as amended from time to time.
- 2.03 **Assessment** shall mean the charge which is to be levied and assessed against each Owner and the Owner's Lot and Unit for Association expenses as set forth in Article XIII.
- 2.04 **Association** shall mean Heirloom Cottages Owners Association, a Utah nonprofit corporation, to be established, its successors and assigns.
- 2.05 **Board** shall mean the Board of Trustees of the Association.
- 2.06 **Bylaws** shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in Articles XI, XII and XIII.
- 2.07 **Common Areas** shall mean all portions of the Development except the Lots and Units, and shall include all property to be owned by the Association for the common use and enjoyment of the Owners such as all private undedicated roadways, driveways, parking, amenities, open spaces, landscaping, structural common areas, if any, and the like, together with all easements appurtenant thereto, as may be reflected herein or on the Plat.
- 2.08 **Declarant** shall mean Georgetown Development, Inc., a Utah corporation, its successors and assigns, if any, as developers of the Development.
- 2.09 **Declaration** shall mean this **Declaration of Protective Easements, Covenants, Conditions and Restrictions** as the same may be supplemented or amended from time to time.
- 2.10 **Development** shall mean Heirloom Cottages expandable planned unit development as it exists at any given time.
- 2.11 **Limited Common Areas** shall mean any Common Areas designated herein or on the Plat for exclusive use by an Owner or group of Owners. Limited Common Areas that may be identified on the Plat with the same number or other designation by which a Unit is identified thereon shall be Limited Common Area for the exclusive use of the Owner of the Unit bearing the same number or designation.

- 2.12 **Lot** shall mean and refer to any of the separately numbered, individually described lots within the Development as designated on the Plat and intended for single family residential use, unless indicated otherwise on the Plat.
- 2.13 **Managing Agent** shall mean any person or entity appointed or employed as Managing Agent by the Association.
- 2.14 **Mortgage** shall mean any recorded first mortgage or first deed of trust encumbering a Lot; and **Mortgagee** shall mean the mortgagee or beneficiary named in a Mortgage.
- 2.15 **Owner** shall mean any person who is the owner of record (as reflected by the Public Records) of a fee or undivided fee interest in any Lot, and any contract purchaser of any Lot. Notwithstanding any applicable theory relating to mortgages, no **Mortgagee** nor any trustee or beneficiary of a deed of trust or trust deed shall be an owner of a Lot unless such party acquires fee title thereto pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Lot owned by it. Multiple owners of a particular Lot shall be jointly and severally liable as to all responsibilities of an Owner.
- 2.16 **Plat** shall mean and refer to the subdivision plat entitled **Plat "A", Heirloom Cottages, An Expandable Planned Unit Development, American Fork City, Utah County, Utah**, prepared and certified to by Ray Jensen (a registered Utah land surveyor holding Certificate No.156196), executed and acknowledged by Declarant, accepted by American Fork City, and recorded in the Public Records concurrently with this Declaration. Such term shall also include any subdivision plat or plats pertaining to all or any portion of the Additional Land as and when the same is annexed and added to the Development pursuant to the annexation provisions of Article III of this Declaration.
- 2.17 **Property** shall mean all land covered by this Declaration, including Common Areas and Lots and other land annexed to the Development as provided in this Declaration. The initial Property shall consist of the land described in Section 3.01 of Article III hereof.
- 2.18 **Public Records** shall mean the Office of the Utah County Recorder, Provo, Utah.
- 2.19 **Specific Assessment** shall mean a charge against a particular Owner or his Lot for the purpose of reimbursing the Association for costs incurred in bringing the Owner or his Lot or Unit into compliance with the provisions of this Declaration, the Articles, Bylaws or Rules and Regulations of the Association, or any other charge designated as a Specific Assessment in this Declaration, the Articles, Bylaws or Rules and Regulations of the Association, together with costs, interest, attorney's fees and other charges payable by such Owner pursuant to the provisions of this Declaration.
- 2.20 **Rules and Regulations** shall mean and refer to those Rules and Regulations authorized, adopted and promulgated to the Owners from time to time by the Board pursuant to Section 12.03.
- 2.21 **Unit** shall mean an attached structure which is designed, constructed and intended for use or occupancy as a single family residence on a Lot, together with all improvements located on the same Lot and used in conjunction with such residence, including anything located

within or without said Unit (but designated and designed to serve only that Unit) such as patios, decks, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, but specifically excluding roofs and certain exterior surfaces of Units and patio fences, if any, all of which roofs, surfaces and fences shall be deemed to be Limited Common Areas designated for the exclusive use of the particular Units to which such roofs, surfaces and fences appertain, even though not designated as Limited Common Areas on the Plat.

### ARTICLE III

#### PROPERTY DESCRIPTION AND ANNEXATION

3.01 **Submission.** The Property which initially is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property in the American Fork City, Utah County, State of Utah:

A parcel of land situated in the N1/2 NE1/4 of Section 24, T.5S., R.1E., SLB&M. The boundaries of said parcel of land are described as follows:

Beginning at the intersection of the Southerly boundary line of Evergreen Acres Subdivision Plat "B" and a fence line, which point is 802.41 feet N. 89°45'24" W. Along the section line and 18.68 feet South from the Northeast corner of said Section 24; thence S. 0°16'14" W. 385.01 feet along a fence line; thence N. 89°48'47" W. 103.93 feet; thence S. 0°16'14" W. 106.84 feet to a fence line; thence N. 89°48'53" W. 218.41 feet; thence North 171.31 feet; thence East 36.03 feet; thence North 129.13 feet; thence East 23.89 feet; thence North 189.93 feet; thence N. 89°54'36" E. 264.74 feet to the point of beginning.

The above described parcel of land contains 3.0239 acres.

**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, whether or not the same are reflected on the Plat.

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

With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire 10 years after the date on which this Declaration is recorded in the Public Records.

**ALL OF THE FOREGOING IS SUBJECT TO:** (1) all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; (2) all Patent reservations and exclusions; (3) all mineral reservations of record and rights incident thereto; (4) all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any Mortgage (and nothing in this paragraph shall be deemed to modify or amend such Mortgage); (5) all visible easements and rights-of-way; (6) all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; (7) an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Development improvements is complete; (8) all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; **(9) AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THIS DECLARATION.**

**3.02 Division into Lots.** The Development is hereby divided into 48 Lots, as set forth and described on the Plat, with appurtenant and equal rights and easements of use and enjoyment in and to the Common Areas, as well as appurtenant obligations pertaining to assessments, maintenance, etc., all as set forth in this Declaration.

**3.03 Annexation by Declarant.** Declarant may, from time to time, expand the Development subject to this Declaration by the annexation of all or part of the lands constituting the Additional Land. Subject to compliance with the conditions imposed by the following Section 3.04, the annexation of any such land shall become effective upon the recordation in the Public Records of a Plat of such Additional Land signed by the owner thereof and of a supplemental declaration ("Supplemental Declaration") which (a) is signed by the then owner(s) of such Additional Land as Declarant; (b) describes the land to be annexed; (c) declares that the annexed land is to be held, transferred, sold, conveyed, and occupied as part of the Property subject to this Declaration; and (d) sets forth such additional limitations, restrictions, easements, covenants and conditions, not inconsistent with those of this Declaration, as may be applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property and the Development and subject to the provisions of this Declaration and any amendment or supplement thereto.

**3.04 Limitation on Annexation.** Declarant's right to annex land to the Development shall be subject to the following limitations:

- (a) The annexed land must be part of the Additional Land set forth and described herein;
- (b) Declarant shall not effectuate any annexation of land which would cause the total number of Lots existing in the Development to exceed 90.
- (c) The holder of each mortgage, deed of trust or other security device affecting any part of the Additional Land being annexed into the Development must consent, through appropriate instruments to be recorded in the Public Records, to the recordation of the Supplemental Declaration and to the Plat to which such Supplemental Declaration relates;

(d) The Additional Land added to the Development may be located in American Fork City but must be subdivided into Lots and Common Areas designed to be used for purposes similar to those contemplated by this Declaration, with all Units and Lots being similar in concept to that of such Units, Lots and uses in Plat "A" of the Development; provided, however, that in each succeeding phase of the Development the architectural style of the Units within such phase must remain consistent throughout such succeeding phase and in harmony with that of prior phases;

(e) All Common Areas covered by the Supplemental Declaration designated on the Plat related thereto shall be conveyed to the Association pursuant and subject to the provisions of Section 5.03 of this Declaration; and,

(f) Declarant's right to annex land to the Development shall expire 10 years after this Declaration is recorded in the Public Records.

**3.05 No Obligation to Annex or Develop.** Declarant has no obligation hereunder to annex any Additional Land to the Development or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Property, as defined on the date hereof, and land annexed thereto in accordance with the terms of this Article, shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat filed by Declarant or described or referred to in any documents executed or recorded by Declarant, including Exhibit A to this Declaration.

**3.06 Other Annexation.** Anything herein to the contrary notwithstanding, to the extent that Declarant does not now or in the future may not own all of the Additional Land, the then owners of such Additional Land or parts thereof ("Adjoining Owners") may annex all or any part of the Additional Land to the Development and subject the same to the terms of this Declaration, provided that (a) the same limitations which are imposed on Declarant under Section 3.04 of this Article III shall be applicable to Adjoining Owners; and (b) Adjoining Owners make the recordations and comply with all the other requirements referred to in Section 3.03 of this Article III.

## ARTICLE IV

### DUTIES AND OBLIGATIONS OF OWNERS

**4.01 Maintenance and Repairs.** Each Owner shall at his own cost maintain his Lot and any improvements constructed thereon in good condition and repair at all times, including Unit exteriors, roofs, and patio fences, if any. In the event of the damage or destruction of any Unit, the Owner of the Lot on which such Unit is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Development. **The painting or repainting, remodeling, rebuilding or modification of any Unit exteriors or parts thereof must first be submitted to and approved by the Design Review Committee pursuant to "Article VII".** Each Owner of any Lot in the Development has an affirmative duty to do everything possible to keep such Owner's Lot and Unit in good repair at all times. No Owner shall be openly or wantonly negligent in performing such a duty.

4.02 **Owners Insurance.** Notwithstanding any insurance coverage required to be provided herein by the Association, each Unit Owner shall be responsible to procure and maintain in force at his own cost hazard insurance on his Unit and personal contents and such liability coverage as may be customary in projects such as the Development and which is consistent with each Owner's individual circumstances.

4.03 **Assessments and Rules Observance.** Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration and for the observance of the Rules and Regulations promulgated by the Association from time to time pursuant to Section 12.03.

4.04 **Transfer of Interests.** Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration following such transfer.

## ARTICLE V

### PROPERTY RIGHTS AND CONVEYANCES

5.01 **Easement Concerning Common Areas.** Each Lot shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas for their intended purposes. Such right and easement shall be appurtenant to and shall pass with title to each Lot and shall in no event be separated therefrom.

5.02 **Form of Conveyancing; Leases.** Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ as identified in the Plat recorded in the office of the Utah County Recorder as Entry \_\_\_\_\_, Map Filing No. \_\_\_\_\_ contained within Phase \_\_\_\_\_ of **Heirloom Cottages Planned Unit Development, Utah County, Utah**, SUBJECT TO the **Declaration of Protective Easements, Covenants, Conditions and Restrictions of Heirloom Cottages Planned Unit Development**, recorded in the office of the Utah County Recorder as Entry \_\_\_\_\_, Book \_\_\_\_\_, at Page \_\_\_\_\_ - \_\_\_\_\_, (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Protective Easements, Covenants, Conditions and Restrictions (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

5.03 **Title to Common Areas; Taxes.** Concurrent with or as soon as possible following the recordation of this Declaration and the Plat, Declarant shall convey to the Association title to the various Common Areas free and clear of all liens, if possible, other than the lien of current general taxes and the lien of any nondelinquent assessments, charges, or taxes imposed by governmental or quasi-governmental authorities, which, to the extent possible, shall be prorated equally among all of the Lots in the Development and assessed by the applicable governmental authorities to each Lot Owner as opposed to the Association separately. Declarant shall make every effort to release any liens on Common Areas which secure construction financing for the Development, leaving only the Lots as security therefor.

**5.04 Limitation on Easement.** Each Lot's appurtenant right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to govern by reasonable Rules and Regulations the use of the Common Areas so as to provide for the enjoyment of the Common Areas in a manner consistent with the collective rights of all of the Owners;

(b) The right of any governmental or quasi-governmental body having jurisdiction over the Property within the Development to enjoy access and rights of ingress and egress over and across any street or driveway, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service; and

(c) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be deemed inconsequential and agreed to by the Association; provided that any such dedication or transfer deemed to have major consequences must first be assented to in writing by (i) the Mortgagee of each and every Mortgage that encumbers any Lot and (ii) the Owners of Lots to which at least sixty percent (60%) of the total votes in the Association appertain.

**5.05 Utility Easements.** Each Lot is subject to appurtenant easements for underground lines for utility purposes under and through such portions of the Common Areas as are comprised of roads, walkways and landscaped areas. If any Owner utilizes such easement rights with respect to his Lot or Unit, he shall be responsible for the restoration to its former state of any portion of the Common Areas which may have been disturbed or damaged as a result.

**5.06 Easements for Encroachments.** If any structure or Unit improvement (including without limitation, roof overhangs) constructed on any Lot, whether or not constructed in replacement of the structure or improvement previously located thereon (so long as such structure or improvement is in substantially the same configuration and location as such prior structure or improvement), now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure or Unit (including without limitation, roof overhangs) on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas (due to the reconstructed structure's being in a slightly different location than its predecessor) shall be permitted, and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

**5.07 Limited Common Area Easements.** As reflected on the Plat there exists Limited Common Area spaces in connection with all residential building Lots. Each such Limited Common Area space is deemed hereby to constitute a perpetual easement appurtenant to the Lot or Lots to which it is attached and to which it appertains. Notwithstanding the obligation of the Association to maintain Common Areas pursuant to Article XII and various other sections of this Declaration, the Owner(s) of the Lots to which such Limited Common Area is appurtenant shall be responsible to care for and maintain the same, in good repair and condition at all times, including the interior and exterior of any fence which may enclose any portion thereof.



5.08 **Landscape Maintenance Easement.** Each Owner, by acquiring or in any way becoming vested with his Owner's interest in a Lot, irrevocably grants to the Association an easement to those portions of the Lot that are exterior to the actual foundations of the Owner's residence constructed upon such lot; provided that such easement shall not apply to any portion of such Lot enclosed by a patio fence, if any, which attaches to the residence, in which case the easement shall apply to portions of the Lot exterior to such fence. The purpose of such easement is to provide for uniform landscape maintenance on Common Areas within the Development. The easement and the area covered thereby shall be deemed to be Common Area for such purposes only (but not for purposes of ownership, title, taxes, etc.).

## ARTICLE VI

### USE RESTRICTIONS

6.01 **Use of Common Area.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Units set forth herein.

6.02 **Residential Use.** The Property is zoned residential and is restricted to single family residential use pursuant to applicable provisions of applicable municipal zoning ordinances. Each Lot, Unit and Owner are subject to the uses and restrictions imposed by such zoning, including parking restrictions, and no Lot or Unit shall be used, occupied, or altered in violation of such ordinances or so as to create a nuisance or to interfere with the rights of any other Owner. All Units shall be used for private single family residential purposes. The term "residential" as used herein shall be held and construed to exclude individual room letting or boarding and commercial and professional uses which are not the subject of a permit granted by the applicable municipality pursuant to its then current home occupation ordinance.

6.03 **Prohibited Use and Nuisances.** The following uses and practices are specifically prohibited, in addition to any additional prohibitions which may, from time to time, be adopted by the Board in Rules and Regulations pursuant to Section 12.03 of this Declaration:

(a) No Unit or any part thereof shall be used or occupied by any persons not coming within the definition of "Family" as such term is defined and intended in the applicable municipal zoning ordinances as of the date hereof.

(b) No lease of any Unit shall be for less than the whole thereof. Leases shall contain a provision that the same are subject to the provisions of this Declaration.

(c) No animals, livestock, or poultry of any kind shall be permitted on any Lot or within any Unit except such domesticated household pets or birds as are allowed pursuant to the Rules and Regulations, including leash laws, adopted by the Board pursuant to Section 12.03 of this Declaration.

(d) No parking of vehicles of any kind within the Development shall be permitted except as set forth in the Rules and Regulations adopted by the Board pursuant to Section 12.03 of this Declaration.

(e) No private outside television or radio aerial or antenna, or other similar device for reception or transmission shall be permitted on any Lot (unless such device is located on the rear

patio area or alternatively located on the Unit's exterior) pursuant to written approval of the Design Review Committee.

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(f) No Unit within the Development shall (i) contain any coal or wood-burning fireplace; stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is fueled by natural gas only; or (ii) contain a swamp cooler.

## ARTICLE VII

### DESIGN REVIEW

7.01 **Original Construction.** Developer intends to develop the Lots and construct the Units pursuant to applicable municipal approvals, planning and zoning approvals and permits, development agreements and construction plans and specifications (herein together called "design guidelines"). All original construction by Declarant pursuant to the design guidelines, as they may be amended from time to time, shall be and hereby are approved.

7.02 **Design Review Committee.** The Board of Trustees of the Association shall appoint a three-member Design Review Committee (the "Committee"), the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the Board itself, or certain appointed members thereof, shall perform the duties required of the Committee.

7.03 **Submission to Committee.** No Unit, accessory of or addition to a Unit which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Unit or any part thereof except glass surfaces shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee.

7.04 **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Development reasonably conform to and harmonize with the design guidelines and with existing surroundings and structures. Any structure hereafter constructed on any Lot in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure; and, if the plans and specifications therefor meet such criteria, the Committee must approve the same.

7.05 **Approval Procedure.** Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within 30 days after submission. However, plans and specifications for any replacement structure to be constructed in substantially the same configuration, location, architectural style and redundant size as its predecessor shall be approved or disapproved within 10 days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

7.06 **Construction.** Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If no reasonable alternative exists and if reasonably necessary to enable such improvement, construction, landscaping, or alteration, the

person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

**7.07 Liability for Damages.** Neither the Committee nor any member thereof shall be held liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by such member or the Committee with respect to any request made pursuant to this Article VII, provided that the Committee's process for approving or disapproving of any action or inaction is reasonable and not grossly negligent.

**7.08 Declarant's Obligation.** Declarant hereby covenants in favor of each Owner (a) that all Units to be erected by it and all improvements of the Common Areas to be accomplished by it in the Development will be architecturally compatible with respect to one another; and (b) that on the date on which this Declaration is recorded in the Public Records, all Lots and Common Areas of the Development will be located approximately in the locations shown on the Plat.

### ARTICLE XIII

#### INSURANCE

**8.01 Hazard Insurance.** The Board shall procure and maintain from a company or companies holding a financial rating of Class A or better from Best's Key Rating Guide, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the structural Common Areas, if any, owned by the Association with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

(a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and

(b) such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.

**8.02 Liability Insurance.** The Board shall procure and maintain from a company or companies holding a financial rating of Class A or better from Best's Key Rating Guide a policy or policies of public liability insurance to insure the Association, the Board, the Managing Agent and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried in connection with properties of comparable character and usage in the county in which the Development is located nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The policy shall provide that the

policy may not be canceled or substantially modified by the insurer unless it gives at least 30 days prior written notice thereof to each insured. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

**8.03 Additional Insurance; Further General Requirements.** The Board may also procure insurance which shall insure the Common Areas and the Association or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

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

(b) that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners;

(c) that it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and

(d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

**8.04 Fidelity Coverage.** The Association shall maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. In that event, such fidelity bonds shall:

(a) name the Association as an obligee;

(b) be written in an amount based upon the best business judgment of the Association and shall not be less than the estimated maximum of funds (including reserve funds) in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months assessment on all Lots plus reserve funds;

(c) contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and

(d) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the insured.

**8.05 Review of Insurance.** The Board shall periodically, and whenever requested by Owners entitled to exercise at least twenty percent (20%) of the outstanding votes in the Association, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Unit and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner and any Mortgagee.

**8.06 Unit Owners Policies.** Each Unit Owner shall be responsible to purchase and maintain in force appropriate hazard, content and liability insurance as such Owner shall determine what is appropriate

to the Owner's needs and circumstances. The Association will not be required to file claims on any of its policies for any damage or liability claim that either should or would have been covered under any Owner's policy.

**8.07 Other Insurance Provisions.** All insurance required pursuant to this Article VIII shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article VIII to the contrary, any insurance required to be obtained by the Association pursuant to this Article VIII shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Areas or risks being insured.

## ARTICLE IX

### RIGHTS OF MORTGAGEES

**9.01 Title and Mortgagee Protection.** A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give the same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

**9.02 Preservation of Common Area.** The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Development. Unless the Association shall receive the prior written approval of (a) all first Mortgagees of Lots and (b) the Owners of all Lots, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas, except to grant reasonable easements for utilities and similar or related purposes.

**9.03 Notice of Matters Affecting Security.** The Association shall give written notice to any Mortgagee of a Lot requesting such notice whenever:

(a) there is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within 60 days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds \$10,000; or

(c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

**9.04 Notice of Meetings.** The Board shall give to any Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such Mortgagee shall have the right to designate in writing a representative to attend any or all such meetings.

**9.05 Right to Examine Association Records.** Any Mortgagee shall, upon request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Lot securing the Mortgage.

**9.06 Right to Pay Taxes and Charges.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or may not have become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy. Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**9.07 No Priority Accorded.** No provision of this Declaration gives or may give a Lot Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Areas.

**9.08 Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article IX, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

## ARTICLE X

### PARTY WALLS

**10.01 General Rules of Law to Apply.** Each wall to be built as a part of the original construction of any Unit and placed substantially on a dividing line between any two Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto.

**10.02 Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**10.03 Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owner of another Lot thereafter makes use of the wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use. The foregoing provision shall not prejudice, however, the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions.

10.04 **Weatherproofing.** Notwithstanding any other provision of this Article X, an Owner who, by his negligent or willful act, causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

10.05 **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article X shall be appurtenant to the land and shall pass to such Owner's successors in title.

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**THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES XI, XII AND XIII. THE MISCELLANEOUS PROVISIONS OF ARTICLE XIV OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE DECLARATION AND BYLAWS PROVISIONS, AS THE CASE MAY BE.**

## **ARTICLE XI**

### **BYLAWS**

#### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**11.01 Membership.** Every Owner upon acquiring title to a Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

**11.02 Voting Rights.** The Association shall initially have two classes of voting rights, votes of both classes being of equal value as to all matters:

(a) Class A. Each Owner, including Declarant, shall be entitled to one vote for each Lot in which such member holds the interest required for Association membership.

(b) Class B. Declarant shall be the only member entitled to Class B voting rights which shall entitle Declarant to one vote for each Class A vote outstanding at such time (including those to which Declarant is entitled). Class B voting rights shall terminate and become a nullity on the earlier of:

(i) the expiration of 90 days following the date on which the total outstanding Class A voting rights, other than those held by Declarant, equal the total number of Class B voting rights to which Declarant is entitled pursuant to the provisions of Section 11.02(b); or

(ii) on December 31, 2007; or

(iii) upon surrender of the Class B voting rights by Declarant in writing to the Association. Upon termination of the Class B voting rights, all members with Class A voting rights, including Declarant, shall have equal voting rights as to all matters.

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



11.04 **Records of Ownership.** Every Owner shall promptly cause to be duly filed of record in the Public Records the conveyance document (or in the case of a contract buyer, a copy of the sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein shall notify the Secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the Secretary of the Association shall maintain all such information in the records of ownership. The Association may at any time obtain and rely on information from the Public Records regarding the Owners and Mortgagees of Lots.

11.05 **Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

11.06 **Annual Meetings.** Annual meetings of the membership of the Association shall be held each year beginning in the year 2005 on such month, day and time as is set forth in the notice therefor; provided, that after the first such annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected trustees of the Board, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

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

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

11.09 **Quorum.** Except as provided in Section 13.10, Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast at least forty percent (40%) of the total Association votes eligible to vote.

11.10 **Adjourned Meetings.** If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than 48 hours nor more than 45 days from the time the original meeting was called, at which time the requirements for a quorum shall be reduced by one-half that required at the immediately preceding meeting.

11.11 **Officers.** The Association shall have a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. The Board may, if needed, appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Committee immediately following each annual meeting of Owners at which the new Board has been elected; provided

that until the Board is elected by the Owners pursuant to Section 11.13, the officers will be appointed by Declarant.

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

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

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

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

11.12 **Initial Composition of Board.** Declarant alone shall have the right to select the initial Board of Trustees which may be composed of three Trustees, none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until the termination of the Class B voting rights as provided in Section 11.02(b) at which time the Association shall proceed to elect members of the Board in accordance with the Association's Bylaws as set forth in Section 11.13.

11.13 **Board of Trustees: Composition, Election, Vacancies.** The Association, through its Board of Trustees, is responsible for the maintenance of any Common Areas, the determination, imposition and collection of Assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. Subject to the provisions of Section 11.12, the Board shall be composed of five Trustees, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). The Owners may increase the maximum number of Trustees to seven at any meeting of Association members. At the first meeting of Owners to elect a Board of Trustees two shall be elected to a three-year term, two to a two-year term, and one to a one-year term. As Trustees' terms expire, new Trustees shall be elected for three-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Trustees from among the Owners and such appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the Trustee they were appointed to replace.

11.14 **Indemnification of Board.** Each of the Trustees shall be indemnified and held harmless by the Lot Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent, grossly negligent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in

connection with any proceeding in which such Trustee may become involved by reason of being or having been a member of said Board.

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

## ARTICLE XII

### BYLAWS

#### DUTIES AND POWERS OF THE ASSOCIATION

12.01 **Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, Bylaws or the Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Development:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Areas conveyed to it, whether by Declarant or by others, provided the same is free and clear of liens and encumbrances (as provided in Section 5.03).
- (c) The Association shall maintain, repair, replace and landscape the Common Areas.
- (d) In connection with its duties to maintain and repair Common Areas, the Association will provide maintenance and repair upon the private roads and drives within the Development, including all Limited Common Area driveways, and shall maintain all landscaping and plantings upon the Common Areas of the Development.
- (e) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- (f) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.
- (g) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon 30 days written notice thereof; and the term of any such agreement shall not exceed one year, renewable by

agreement of the parties for successive periods of one year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

**12.02 Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of the Declaration or the Bylaws, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement as required herein. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, the Bylaws or any Rules and Regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of the Declaration, the Bylaws and such Rules and Regulations.

(b) In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:

(i) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate;

(ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners;

(iii) Such Common Area related utility services as the Board may from time to time deem necessary or desirable;

(iv) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(v) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any portion of the Development; and

(vi) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

**12.03 Association Rules and Regulations.** The Board from time to time, subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal and enforce reasonable Rules and Regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any streets, driveways or parking areas owned by the Association; (c) the collection and disposal of

refuse; (d) uses and nuisances pertaining to the Development; and (e) all other matters concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Development.

12.04 **Limitation of Liability.** No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee of the Board, or the Managing Agent.

## **ARTICLE XIII**

### **BYLAWS**

#### **ASSESSMENTS**

13.01 **Personal Obligation and Lien.** Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the annual and any special assessments and Specific Assessments described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time such assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

13.02 **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development, the interests of the Owners therein, paying costs properly incurred by the Association, and the maintenance, operation and carrying of the Common Areas. The use made by the Association of funds obtained from assessments may include, but shall not be limited to, payment of the cost of taxes; insurance premiums on policies required of the Association hereunder; maintenance, repair, and improvement of the Common Areas; payment of any basic coverage cable TV providing coverage availability to each Unit in the Development; establishment and funding of a reserve to cover major repair or replacement of improvements within Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Declaration, its Articles of Incorporation, Bylaws or Rules and Regulations.

13.03 **Annual Assessments.** Annual assessments shall be computed and assessed against all Lots in the Development based upon advance estimates of the Association's cash requirements to provide for payment of common costs as set forth in Section 13.02.

13.04 **Annual Budget.** Annual assessments shall be determined on the basis of a fiscal year ending December 31; provided the first fiscal year shall begin on the date of recordation of this Declaration in the Public Records. On or before December 15 of each fiscal year the Association shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner within 30 days of such Owner's initial purchase. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves,

and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessments for the upcoming fiscal year and as the major guideline under which the Development shall be operated during such annual period.

**13.05 Notice and Payment of Annual Assessments.** Except with respect to the fiscal period ending December 31, 2004, the Association shall notify each Owner as to the amount of the annual assessment against his Lot on or before December 15 of the year preceding the year for which such annual assessment is made. Each annual assessment shall be payable in 12 equal monthly instalments, one such instalment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessments for the fiscal period ending December 31, 2004, shall be based upon such portion of the calendar year 2004 as follows the date of recordation of the Declaration in the Public Records and shall be payable in such instalments and at such times as the Association, in the sole discretion of its Board of Trustees, may determine. The failure of the Association to give timely notice of any annual assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date 15 days after notice of such assessment shall have been given to the Owner in the manner provided in Section 14.01.

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

**13.07 Maximum Annual Assessment.** Until January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall not exceed \$1,020 per Lot. From and after January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each calendar year thereafter by not more than fifteen percent (15%) above the maximum annual assessment for the previous year without the vote of Owners entitled to cast a majority of the Association votes.

**13.08 Special Assessments.** The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of amenities, infrastructure or improvements within the Common Areas. Any such special assessment shall be apportioned among and assessed to all Lots in the same manner as annual assessments. Such special assessments must be assented to by at least sixty percent (60%) of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least 10 but not more than 30 days prior to the meeting date.

**13.09 Uniform Rate of Assessment.** All monthly and special assessments authorized by Sections 13.03 and 13.08, respectively, shall be fixed at a uniform rate for all Lots; provided, however, that until a Lot has been both fully improved with a Unit and occupied for the first time for residential purposes, the monthly and special assessments applicable to such Lot shall not be due and payable. During the period of time that Declarant holds the Class B voting rights in the Association, if assessed fees collected by the Association fail to adequately meet Association expenses, then Declarant shall pay any shortfall.

13.10 **Quorum Requirements.** The quorum at any Association meeting required for any action authorized by Section 13.08, above, shall be as follows: At the first meeting called, the presence of Owners of or proxies entitled to cast sixty percent (60 %) of the total votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 13.08, above) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held less than 48 hours nor more than 45 days following the immediately preceding meeting.

13.11 **Specific Assessment.** In addition to the annual assessment and any special assessment authorized pursuant to Section 13.08, above, the Board may levy at any time Specific Assessments (a) on every Lot especially benefitted (i.e., benefitted to a substantially greater degree than any other Lot) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the Lots benefitted.

13.12 **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely, thereon in good faith.

13.13 **Effect of Nonpayment; Remedies.** Any assessment (whether annual, special or Specific Assessment) not received within 10 days of the date on which it or any instalment thereof becomes due shall be subject to a late charge not to exceed 5% thereof, which, together with interest and costs of collection, shall be, constitute, and remain a continuing lien on the affected Lot. If any assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one percent (1%) per month; and the Association may bring an action against the Owner who is personally liable therefor or may foreclose its lien against the Lot pursuant to the provisions of the Utah Code, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage or in any other manner permitted by law. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights. Failure of the Association to promptly enforce any remedy granted pursuant to this Section 13.13 shall not be deemed a waiver of any such rights.

13.14 **Subordination of Lien to First Mortgages.** The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or

purchaser who comes into possession of or becomes the Owner of a Lot by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment instalment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot in connection with any foreclosure of a first Mortgage shall relieve any Lot from the lien of any assessment instalment thereafter becoming due.

13.15 **No Abatement.** No diminution or abatement of any assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Development; (b) the making of (or failure to make) any repairs or improvements to or the maintenance of any Common Areas of the Development, or any part thereof; or (c) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

#### ARTICLE XIV

#### MISCELLANEOUS

14.01 **Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any officer or Trustee of the Association. Any notice required or permitted to be given to the Design Review Committee may be given by delivering or mailing the same to the Managing Agent or the Association or any member of the Design Review Committee.

14.02 **Amendment.** This Declaration may be amended (as opposed to terminated) by an instrument recorded in the Public Records, which is executed either by Owners who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association or by the Association which shall certify that the required sixty percent (60%) vote was obtained in either a Member meeting and/or by consent and is so documented in the records of the Association. The foregoing right of amendment shall, however, be subject to the right to supplement this Declaration in the manner and to the extent provided for in Article III of this Declaration. No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), or to a Mortgagee, Owner or the Association shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant or by such Mortgagee, Owner or the Association, as the case may be.

14.03 **Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher



percentage or a greater number is required by law, The following additional provisions shall govern any application of this Section 14.03:

(a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Owner;

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed;

(c) Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose; and

(d) Unless the consent of all Owners whose memberships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.

14.04 **Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property or the Additional Land may be assigned.

14.05 **Interpretation.** 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, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

14.06 **Condemnation.** If at any time or times an insubstantial or minor part of the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

14.07 **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 Declarant, all parties who heretofore acquired or hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

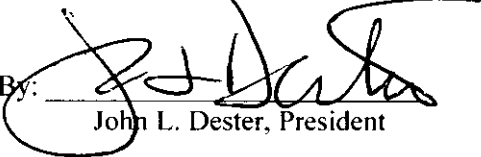
14.08 **Enforcement of Restrictions.** The Association, any Owner or any Mortgagee shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration. The prevailing party in an action for the interpretation of, the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

14.09 **Duration/Termination:** This Declaration shall remain in effect until such time as there is recorded in the Public Records, following the approval of the applicable municipalities authorizing such termination, an instrument of termination which is executed both by seventy-five percent (75%) of the total outstanding votes of the Association; and the Mortgagee of each and every Lot.

14.10 **Effective Date.** This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the Public Records.



**EXECUTED** by Declarant on the day and year first above written.

Georgetown Development, Inc.

By:   
John L. Dester, President

STATE OF UTAH     )  
                                  ss.  
COUNTY OF UTAH    )

The within instrument was acknowledged before me this 19<sup>th</sup> day of February, 2004, by John L. Dester in the capacity indicated.

  
NOTARY PUBLIC  
 SANDRA J. STEERE  
NOTARY PUBLIC • STATE of UTAH  
2230 N. UNIV. PKWY STE 7G  
PROVO, UTAH 84604  
COMM. EXP. 12-3-2005

**EXHIBIT A**

to

**DECLARATION OF PROTECTIVE EASEMENTS,  
COVENANTS, CONDITIONS AND RESTRICTIONS**

of

**HEIRLOOM COTTAGES  
Expandable Planned Unit Development**

Utah County, Utah

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

Located in Utah County, Utah:

**BOUNDARY DESCRIPTION**

A PARCEL OF LAND SITUATE IN THE N1/2 NE1/4 OF SECTION 24, T.5S., R.1E., SLB&M. THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY BOUNDARY LINE OF EVERGREEN ACRES SUBDIVISION PLAT "B" AND A FENCE LINE, WHICH POINT IS 802.41 FEET N. 89°45'24" W. ALONG THE SECTION LINE AND 18.68 FEET SOUTH FROM THE NORTHEAST CORNER OF SAID SECTION 24; THENCE S. 0°16'14" W. 385.01 FEET ALONG A FENCE LINE; THENCE N. 89°48'47" W. 103.93 FEET; THENCE S. 0°16'14" W. 106.84 FEET TO A FENCE LINE; THENCE N. 89°48'47" W. 391.13 FEET ALONG A FENCE LINE TO A FENCE CORNER; THENCE N. 0°57'19" E. 103.27 FEET ALONG A FENCE LINE TO A FENCE CORNER; THENCE N. 89°08'33" W. 125.47 FEET ALONG A FENCE LINE TO A FENCE CORNER; THENCE N. 1°19'18" E. 96.48 FEET ALONG A FENCE LINE; THENCE EAST 2.62 FEET; THENCE NORTH 111.24 FEET; THENCE N. 88°01'43" W. 6.42 FEET TO A EASTERLY BOUNDARY LINE OF WOODHAVEN CONDOMINIUMS PLAT "B"; THENCE N. 1°57'49" E. 177.00 FEET ALONG SAID EASTERLY BOUNDARY TO A SOUTHERLY BOUNDARY LINE OF SAID WOODHAVEN CONDOMINIUMS PLAT "B"; THENCE N. 89°56'50" E. 105.20 FEET TO A EASTERLY BOUNDARY LINE OF SAID WOODHAVEN CONDOMINIUMS PLAT "B"; THENCE N. 0°14'36" E. 0.27 FEET ALONG SAID EASTERLY BOUNDARY LINE TO THE SOUTHERLY BOUNDARY LINE OF SAID EVERGREEN ACRES SUBDIVISION PLAT "B"; THENCE S. 89°52'24" E. 233.86 FEET ALONG SAID SOUTHERLY BOUNDARY LINE; THENCE N. 89°54'36" E. 277.56 FEET ALONG SAID SOUTHERLY BOUNDARY LINE TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 6.409 ACRES.