

HARVARD PARK  
A. PLANNED UNIT DEVELOPMENT SUBDIVISION  
DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS

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APPROVED

SEP 29 1987

CITY RECORDER

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
HARVARD PARK, A PLANNED UNIT DEVELOPMENT SUBDIVISION

THIS DECLARATION is made and executed this 29th day of September, 1987, by HARVARD PARK CORPORATION, a Utah corporation (hereinafter referred to as "Declarant").

I. RECITALS:

A. Declarant is the record owner of that certain tract of Property more particularly described in Article III of this Declaration. Declarant desires to create on said Property a residential development with landscaped areas, open spaces, recreational areas and facilities and other Common Areas.

B. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article III of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a non-profit corporation, HARVARD PARK HOMEOWNERS ASSOCIATION.

NOW, THEREFORE, for the foregoing purposes, Declarant declares that the Property described in Article III of this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

II. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

1. Association shall mean and refer to HARVARD PARK HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, which will own, operate and maintain the Common Areas within the Property.

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2. Board shall mean and refer to the board of Trustees of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association.

3. Common Areas shall mean and refer to all property owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto. The initial common Areas shall consist of all property described in Article III of this Declaration, save and excepting all Lots contained therein,

4. Declarant shall mean and refer to Harvard Park Corporation, a Utah corporation, its successors and assigns.

5. Declaration shall mean this Declaration of Covenants, Conditions and Restrictions.

6. Harvard Park Planned Unit Development Subdivision or the Development, at any point in time, shall mean, refer to, and consist of the Property and all improvements thereon.

7. Limited Common Areas shall mean those Common Areas designated herein and reserved for use with a specific Lot. Driveways, walkways and fenced patios designed and originally constructed for use with a specific Living Unit on a Lot and such additional walkways and/or modifications of original driveways, walkways and fenced patios as the Board shall approve, shall be designated as Limited Common Areas.

8. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

9. Lot shall mean and refer to one of the separately numbered and individually described plots of land within the Property: (i) which is intended to be owned individually rather than by an association of Owners or in common by Owners of different Lots; and (ii) which is intended to be used as the site of Living Units. It is intended that the exterior surface of each Living Unit corresponds to the perimeter of the Lot upon which said Living Unit is constructed, although second story decks shall be permitted to extend into the air space above Common Areas. Therefore, yards exterior to the Living Unit shall be deemed part of the Common Areas.

10. Managing Agent shall mean and refer to any person or entity appointed or employed as the manager or managing agent by the Association.

11. Member shall mean and refer to every person who holds membership in the Association.

12. Mortgage shall mean any first mortgage, first deed of trust or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed or deed of trust; and Mortgagee shall mean any first mortgagee and any trustee or beneficiary of a first trust deed or deed of trust.

13. Owner or Lot Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include 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.

14. Plat shall mean and refer to a that subdivision plat of "HARVARD PARK, a Planned Unit Development Subdivision", executed and acknowledged by Declarant on September \_\_\_\_, 1987, prepared and certified by Scott F. McNeil, P.E. & S.E. (a duly registered Utah Land Surveyor, holding Registration No. 4099), consisting of one sheet and filed for record in the office of the County Recorder of Salt Lake County, Utah on September \_\_\_\_, 1987, in Book \_\_\_\_, Page \_\_\_\_, as Entry No. \_\_\_\_, creating separately numbered Lots.

15. Property shall mean and refer to the entire tract of real property covered by the Plat, a description of which is set forth in Article III of this Declaration.

### III. PROPERTY DESCRIPTION

1. Submission. The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property located in Salt Lake County, State of Utah:

See Exhibit "A" attached hereto and incorporated herein by this reference

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent they are located outside the Lots included within the above-described tract.

RESERVING UNTO Declarant, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee of Declarant (in a manner which is reasonable and not

inconsistent with the provisions of this Declaration: (i) to construct a Living Unit on each and every Lot and to improve the Common Areas with such facilities (including, but not limited to, roads, walkways, and various landscaped areas) designed for the use and enjoyment of all Members as Declarant may reasonably determine to be appropriate; and (ii) to create and construct such Common Areas as Declarant or as such assignee may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described tract or any improvement thereon is traversed, or partially occupied by a permanent improvement or utility line, a perpetual easement for each improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereto effected shall unless sooner terminated in accordance with their terms, expire ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way of record.

#### IV. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1. 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.

2. Voting Rights. The Association shall have the following described two classes of voting membership:

Class A. Class A members shall be all Owners, but excluding the Declarant until the Class B membership ceases. Class A members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held.

Class B. Declarant shall be the sole Class B member. The Class B member shall be entitled to three (3) votes for each Lot which it owns. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

a. When the total number of votes held by all Class A members equals the total number of votes held by the Class B members;

b. The expiration of ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

3. 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 among themselves, but in no event shall more than one Class A vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting by another Owner of the same Lot, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.

4. Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot. Each Owner shall file a copy of such conveyance document (or contract) 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 by a mortgage which has priority over the lien of any assessment provided herein 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 record of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as a "Reimbursement Assessment" in accordance with the provisions of Article VI, Section 6.

#### V. DUTIES AND POWERS OF THE ASSOCIATION

1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligation and duty to do and perform each and every one of

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the following for the benefit of the Owners and the maintenance and improvement of the property:

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 by Declarant.

c. The Association shall maintain, repair, and replace all landscaping and improvements in the Common Areas, including but not limited to the maintenance of all exterior trees, shrubs, grass, private roads, post lamps and other common area improvements. The Association shall maintain or cause to be maintained the landscaped area including the park strip (area between the back of curb and the property line) to Laird Drive as outlined in the Salt Lake City Board of Adjustment Case No. 319-B and the final landscaping plan approved by the Board. Association shall have no obligation to perform any exterior maintenance and/or repair of any part of a Living Unit, any Limited Common Area appurtenant thereto or any other landscaping installed by an Owner without the Association's express agreement to maintain such landscaping. The Association may also agree from time to time to provide snow removal for all or portions of Limited Common Areas as it shall elect.

As provided in section 9 of Article VIII, each Owner shall have the obligation to provide exterior maintenance of his Living Unit and Limited Common Areas appurtenant thereto, including but not limited to painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, and landscaping, if any, installed by an Owner or his predecessor in title. Each Owner shall paint, repair, and otherwise maintain the exterior and interior of all patio walls and all landscaping within the patio yard area, and maintain all mechanical devices, including but not limited to, intercoms, and appurtenant electrical, plumbing and heating, ventilating and air conditioning systems.

In the event that the need for maintenance or repair of Common Areas as specified above is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner the Board may cause such repairs to be made by the Association and the cost of such exterior maintenance (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Article VI, Section 6) to which



such Lot is subject. In the event of the need for maintenance or repair of the exterior of a Living Unit or Limited Common Areas appurtenant thereto, and in the event such maintenance and/or repair is not made after thirty (30) days written notice to the Owner of such Living Unit, the Board may cause such maintenance and repairs to be made by the Association and the cost of such exterior maintenance (and administrative expenses equal to ten percent (10%) of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Article VI, Section 6) to which such Lot is subject.

d. 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.

e. The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

f. 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 such as shall be 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 thirty (30) days written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent may be an independent contractor and not an agent or employee of the Association.

2. Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and its Bylaws, together with its general powers as a non-profit 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 this Declaration, 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. The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or other-

wise, 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, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of Article IX of this Declaration. 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 this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

b. In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas (and exterior repairs of Living Units and Limited Common Areas to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon no less than ninety (90) days written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

1. Construction, maintenance, repair and landscaping of the Common Areas (and exterior repairs of Living Units and Limited Common Areas upon Lots to the extent necessitated by the failure of Owners of such Lots) 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 Declarant, the Association, the members of the Board and the Owners;

iii. Such utility services, including (without limitation) water, sewer, trash re-

moval, snow removal, electrical, telephone and gas services, as the Board may from time to time deem 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 of the Property; and

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

c. The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of One Thousand Dollars (\$1,000.00), nor the power to sell, convey, mortgage, or encumber any Common Areas.

3. Association Rules. The Board from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; (e) the use of Living Units for business or rental purposes; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents. Rules and Regulations adopted by the Board may be enforced in accordance with the provisions of Section 14 of Article VIII.

4. 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 or the Managing Agent.

## VI. ASSESSMENTS

1. 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 special and Reimbursement Assessments, annual and special assessments and his pro rata share of all taxes levied on the

assets owned by the Association, together with late payment fees, interest and costs of collection including reasonable attorney's fees, 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 the 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 attorneys 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.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents or the Development including, but not limited to maintaining aesthetic and market values of the Property and Living Units located thereon. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvements of the Common Areas, establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; maintenance and repair of the exteriors of Living Units; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance and repairs and replacement of those elements of the Common Areas that must be replaced on a periodic basis.

3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be the sum of \$1,200.00, payable in equal monthly installments.

a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased effective January 1 of each year by the Board of Directors without a Vote of the membership, provided that any such increase shall not be more than twenty percent (20%) of the previous year's assessment. Such monthly assessment shall continue in effect for the following twelve (12) months, which period shall be deemed to be the assessment period.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum regular assessment may be increased

by the Board of Directors in an amount greater than provided for in subsection (a) hereof for the next succeeding twelve (12) calendar months, and at the end of each such period, for each succeeding period of twelve (12) months, provided that any such change shall have the approval by vote or written assent of a majority of the Members other than the Declarant, or if the two class voting structure is still in effect as provided herein and in the Bylaws, a majority of the votes of each Class of Members.

c. After consideration of current maintenance costs and future needs of the development, the maintenance assessment may be decreased by a vote of not less than two-thirds (2/3) of the Owners present, either in person or by proxy and entitled to vote at any duly constituted meeting for such purpose.

4. Special Assessments. From and after the date set under Section 8 of this Article, 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 monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of the Common Areas. Any such special assessment must be assented to by a majority 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 the purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum at any meeting required for any action authorized by Section 3 or 4 above shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast eighty percent (80%) of all the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting, another meeting may be called (subject to the notice requirements set forth in Section 3 and 4 above) at which a quorum shall be sixty percent (60%) of all the votes of each class of membership. If a quorum is not present at the second meeting, another meeting may be called (subject to the notice requirements set forth in Sections 3 and 4 above) at which a quorum shall be forty percent (40%) of all the votes of each class of membership. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

6. Special Assessment on Specific Lot. In addition to the monthly assessment and any special assessment authorized pursuant to section 4 above, the Board may levy at any time Special Assessments (a) on every Lot especially benefited 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 Section 4 of Article IV, Section 2(a) of Article V or other provisions of this Declaration (all or part of the foregoing being sometimes referred to as "Reimbursement Assessments"). The aggregate amount of any such Special Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Lots according to the 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 obligations of the Association, it shall not give rise to a Special Assessment against the Lots benefited.

7. Uniform Rate of Assessment. All monthly and special assessments authorized by Section 3 or 4 above shall be fixed at a uniform rate for all Lots; provided, however, that until a Lot has been both fully improved with a Living Unit and occupied for the first time for residential purposes, the monthly assessment applicable to such Lot shall be one third (1/3) of the monthly assessment which would otherwise apply to such Lot. In the event that, while the Class B membership exists, assessed fees collected by the Association fail to adequately meet Association expenses, then the Declarant must pay sufficient capital up to the full assessed share applicable to the specific Lot; provided, however, that Declarant shall not be obligated to contribute to any reserve fund(s) which may be provided by the Association. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Lots adversely affected.

8. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots as of the first day of the second month following the date that a sale by Declarant of the Lot concerned is closed. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

9. 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.

10. Effect of Nonpayment -- Remedies. Any assessment (whether monthly, special or Reimbursement Assessment) not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1-1/2%) per month; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Lot, or both. 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.

11. Subordination of Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any First Mortgage to an institutional lender; and the holder of any such First Mortgage or purchaser who comes into possession 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 which accrues or becomes due prior to the time such holder or purchaser takes possession 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 shall relieve any Lot from the lien of any assessment thereafter becoming due.

## VII. PROPERTY RIGHTS AND CONVEYANCES

1. Easement Concerning Common Areas. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others.

2. Form of Conveyancing. Any deed, mortgage, deed of trust, 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 Book \_\_\_\_\_, Page \_\_\_\_\_, as Entry No. \_\_\_\_\_, contained within the Harvard Park, a Planned Unit Development Subdivision identified in the "Declaration of Covenants, Conditions, and Restrictions of Harvard Park Planned, a Planned Unit Subdivision" recorded in the office of the Salt Lake County Recorder in Book \_\_\_\_\_, at Page \_\_\_\_\_. 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 Covenants, Conditions and Restrictions.

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.

3. Transfer of Title to Common Areas. Declarant shall convey to the Association title to the various Common Areas free and clear of all liens (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), as each such Common Area is substantially completed.

4. Limitation on Easement. An Owner's 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 rules and regulations the use of the Common Areas by the Owners so as to provide for the enjoyment of the Common areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every owner, including reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas.

b. The right of the City of Salt Lake, and any other governmental or quasi-governmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the common Areas for the purpose of providing police and fire protection, transporting school children, 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 agreed to by the Association; provided that such dedication or transfer must first be



assented to in writing by (i) all holders of first Mortgages secured by Lots and (ii) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Developer)

5. Reservation of Access and Utility Easements. Declarant reserves easements for access, electrical, gas, communications, cable television and other utility purposes and sewer, drainage and water facilities (whether servicing the Property or other properties or both) over, under, along, across and through, together with the right to grant to the County of Salt Lake or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights; provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Nothing herein shall preclude Declarant from entering into a Private Street Agreement with Salt Lake City Corporation on terms and conditions required by it for the express purpose of obtaining a street name and numbers for Lots and to provide Salt Lake City Corporation with such rights of access as shall be necessary for the proper exercise of its police powers.

6. Easements for Encroachments. If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or if any structure constructed by Declarant on any Lot 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 on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

7. Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance and to post such signs and advertisements as may be reasonably incident to or necessary for the (a) construction of Living Units on Lots; (b) improvement of the Common Areas and construction, installation and maintenance thereof, roads, walkways, buildings, structures,

landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners; (c) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roads, walkways and other facilities planned for dedication to appropriate governmental authorities; and (d) the marketing and sale of Living Units on a Lot or Lots. The reservations contained in this paragraph shall expire seven (7) years after the date on which this Declaration is filed for record in the Office of the County Recorder of Salt Lake County, Utah.

8. Easements for Exterior Landscaping. Declarant reserves for itself and Association easements and rights of ingress and egress over, under, along, across and through each portion of a Lot from the Lot boundary line to the exterior surface of each Living Unit to Lot boundary lines for the purpose of installing, maintaining, replacing and otherwise caring for all landscaping upon such areas and the Common Areas. Such reservation is made for the express purpose of permitting all landscaped areas, including those from the boundaries of Lots to the exterior surfaces of Living Units, to be exclusively maintained and cared for by the Association as a Common Area expense. Each Owner consents to the exclusive maintenance of such areas by the Association by his or her purchase of a Unit.

#### VIII. USE RESTRICTIONS

1. 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 Living Units.

2. Use of Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. Except as provided herein, each Living Unit shall be used only as a single-family residence. No gainful occupation, profession, trade or other non-residential use shall be conducted on any Lot or Living Unit, without the prior written consent of the Board. In considering any request for use of a Living Unit for other purposes (in addition to use as a single-family residence), the Board may take into consideration in granting or denying such approval, the additional use intended for such Living Unit whether or not employees other than Owner will be working at the Living Unit, whether or not customers or clients will be frequenting the Living Unit and such other items as the Board shall deem appropriate. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, in a way which would result in an increase in the cost of any insurance covering the Common Areas, or adjoining Living Units, or in a way which would result in an increase in potential liabilities to the Association or other Owners.

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3. Parking and Recreational Vehicles. Except for temporary and guest parking in accordance with rules and regulations established by the Board (which rules and regulations shall not permit over-night parking on streets), each Owner shall be required to park automobiles and other vehicles in garages designed for such purposes, and Owners shall not be permitted to maintain or park additional automobiles or vehicles on any Lot or at the Development. No boats, trailers, large trucks, or commercial vehicles belonging to Owners or other residents of the Property shall be parked within the Development, except temporary parking which shall be permitted in accordance with the rules and regulations adopted by the Board. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Lot, street or other Common Areas, except that these restrictions shall not apply to emergency or short term (not exceeding seventy-two hours) repairs and maintenance to vehicles, all of which shall be performed inside garages.

4. Pets. No animals other than household pets shall be kept or allowed upon the Property. Whenever a pet is allowed to leave a Living Unit, it shall be kept on a leash or in a cage. No animals may be bred upon the Property for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance to other Owners. No exterior structure or fence for the care, housing or confinement of any such pets shall be allowed. Any Owner or other resident within the Development who violates this Section shall be subject to such penalty or fines as the Board by resolution or regulation may provide, including but not limited to a requirement that such pet be permanently removed from the Development.

5. Antennas, Exterior Appliances, Etc. Without prior written approval of the Board, no antenna for radio or television reception, air conditioning unit or other appliance or apparatus, laundry, bedding, garment of other like item, shall be placed within the Common Areas, or outside of any Living Unit. No such item placed within any Living Unit shall be located so as to be readily visible from the Common Areas.

6. Common Areas. The Common Areas of the Development shall be improved and used only for the following purposes:

- a. Vehicular and pedestrian access to and from and movement within the Development, and space for temporary vehicular parking.
- b. Recreational use by Owners and occupants of Living Units and their guests.
- c. Beautification of the Development.
- d. Privacy for the Owners and occupants of Living Units.

e. Such other uses as shall be determined from time to time by the Board for the benefit of members of the Association, following consultation with the Architectural Control Committee.

7. Insurance. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be cancelled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing insurance presently known as homeowners special form coverage (Form 3, or better), unless the Association elects to obtain homeowners special form coverage insurance for all Owners of Lots. Each homeowner's coverage shall specifically include an endorsement covering activities upon and risks associated with the Limited Common Areas without any requirement for contribution by the Association or its insurance carriers.

8. Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Living Unit or appurtenant structures.

9. Maintenance and Repair. No building or structure upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Architectural Control Committee, each such building or structure at all times shall be kept in good condition and adequately painted or otherwise finished. In explanation of the foregoing and not in limitation thereof, each Owner shall provide exterior maintenance to his Living Unit and all Limited Common Areas appurtenant thereto, including but not limited to painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, and landscaping, if any, installed by Owner and his predecessor in title. Failure to perform such maintenance and repair may result in a Reimbursement Assessment in accordance with the provisions of Section 1c of Article V and Section 6 of Article VI. No Owner shall modify any existing structure upon any Lot or Limited Common Area appurtenant thereto, without satisfaction of the conditions set forth in Article IX.

10. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lot, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Lot Owners of the Development. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Living Units or Lots. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or on the exterior of Living Units.

11. Right of Entry. During reasonable hours, any member of the Architectural Control Committee or any member of the Board, or any officer or authorized representative of any of them, shall have the right to enter upon and inspect any building, site, Living Unit or Lot, and the improvements thereon, to ascertain whether or not the rules and regulations of the Board or of the Association have been or are being complied with. Notwithstanding the foregoing, and excepting circumstances perceived to be an emergency, no entry shall be made of any Living Unit without the prior affirmative vote of the Board authorizing the same. Nothing herein shall preclude the Association or its agents from entering a Lot for the purposes set forth in Paragraph 8 of Article VII.

12. Signs. With the exception of such signs as shall be permitted in accordance with the provisions of Section 7 of Article VII, no signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot except:

a. Such signs as may be required by legal proceedings.

b. Residential identification signs of a combined total face area of seventy-two (72) square inches or less for each Living Unit.

c. A "For Sale" sign, to the extent permitted by the Board.

Any sign or similar device erected in accordance with the provisions hereof or Section 7 of Article VII must comply with all applicable zoning ordinances.

13. Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained so as not to be visible from neighboring Lots except to make them available for collection and then only for the shortest time necessary to effect such collection. Each Owner must at all times and at his expense provide garbage cans and plastic liners therefor.

14. Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

a. Declarant, so long as it has any interest in any of the Property;

b. Any Owner; or

c. The Association, by its Board.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

15. Exception for Declarant. Notwithstanding the restrictions contained in this Article VIII, for the ten (10) years following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by the Declarant.

#### IX. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Committee the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.

2. Submission to Committee. No Living Unit, accessory or addition to a Living Unit which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting with a different color, or refurbishing of the exterior of any Living Unit, nor of any patio enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee and, if necessary, building permits obtained from applicable governmental agencies.

3. 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 Property conform to and harmonize with existing surroundings and structures. In this regard, the Committee will necessarily render decisions in part or in whole on aesthetic judgments and such decisions shall nevertheless be binding upon all concerned.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. Submission shall be deemed to have been made only in the event applicant obtains from a Committee Member a signed receipt specifying the date and material submitted. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. 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 unimproved portions of the Common Areas and of the Lots in the vicinity of the activity. In the event of non-compliance with the provisions of this Section, the Board may determine in accordance with the provisions of Section 1c of Article V and Section 6 of Article VI, to cause such item to be completed and the cost of the same shall become a Reimbursement Assessment upon such Lot.

6. Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article IX.

7. Exception for Declarant. The foregoing provisions of this Article IX shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the ten (10) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

8. Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all Living Units erected by it and all improvements of the Common Areas accomplished by it in the Development (i) shall be architecturally compatible with respect to one another; and (ii) that on or before seven (7) years from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah there shall be substantially completed and usable all Common Areas of the Development, all approximately in the locations shown on the Plan.

9. Governmental Approval. Owners, the Board of Trustees and the Committee acknowledge that Harvard Park Planned Unit Development Subdivision obtained approval for the Development from the Salt Lake City Board of Adjustment, Case No. 319-B and any modifications to the approved Plan are subject to the review and approval of the Board of Adjustment.

#### X. INSURANCE

1. Hazard Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI 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 common property owned by the Association (including

all building service equipment, if any, and the like) with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and, if required by any Mortgagee of any Lot, Demolition and Contingent Liability from Operation of Building Laws Endorsement, an Increased Cost of Construction Endorsement, and such other endorsements as any first Mortgagee of a Lot shall reasonably require. Such insurance policy or policies shall name 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 debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

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

2. Liability Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Common Areas and areas under control of the Association by easement 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 by properties of comparable character and usage in the County of Salt Lake 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 insurers as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled by the insurer unless it gives at least 180 days prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. 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.

3. 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 cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners;

c. that it cannot be cancelled, suspended or invalidated due to the conduct of the Association without a prior written demand of not less than sixty (60) days 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.

4. Fidelity Coverage. If the Board elects, 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. Such fidelity bonds shall:

a. name the Association as an obligee;

b. be written in an amount based upon the best business judgement 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; and

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

5. Review of Insurance. The Board shall periodically, and whenever requested by forty percent (40%) or more of the Owners, 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 Lot 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.

6. Lots and Living Units Not Insured by Association.

a. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot and acts and events thereon. Accordingly, Owners of Lots in the Development shall obtain fire, extended coverage and liability insurance to the full replacement value of all Living Units constructed on such Owner's Lot.

b. If the Living Units are to be insured under a blanket or master type casualty insurance policy maintained by the Association, which shall be permitted, then such policy shall insure the Living Units with general liability, fire and extended coverage for the full insurable value, with replacement cost coverage, and agreed value endorsement. Such policy or policies shall also be obtained from a company or companies holding a financial rating at least equal to that mentioned for hazard and liability insurance carrier mentioned in Sections 1 and 2 of this Article X, and shall also contain such other coverage and endorsements as are customary for Living Units of the type in this Development in the State of Utah and meet all other requirements as may be required from time to time by the Mortgagees or their designees.

XI. CONDEMNATION

If at any time or times 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 promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Lot is eliminated, the Board shall disburse that portion of the proceeds of the condemnation award allocable to the interest of the Owner and any first Mortgagee of such Lot, as their interests shall appear, after deducting the proportionate share of said Lot in the cost of debris removal and after deducting any assessments upon such Lot due the Association.

XII. RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first Mortgagees shall be in effect:

1. Preservation of Regulatory Structure and Insurance. Unless the Owners of at least eighty percent (80%) of the Lots (not including Lots owned by Declarant) and such Owners first mortgagees, if any, shall have given their prior written approval, the Association shall not be entitled:

a. by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, or the upkeep of lawns or planting on the Property.

b. to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement, or reconstruction of improvements on the Common Areas.

This Section 1 may be amended as provided in Section 2 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

2. Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (i) all first mortgagees of Lots and (ii) the Owners of at least eighty percent (80%) of the Lots (not including Lots owned by Declarant) the Association shall not be entitled:

a. by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as hereinbefore reserved;

b. to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the Owner thereof.

This Section 2 may be amended as provided in Section 2 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

3. Notice of Matters Affecting Security. The Board shall give written notice to any first Mortgagee of a Lot requesting such notice whenever:

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

b. damage to the Common Areas from any one occurrence exceeds \$10,000.00; or

c. there is any condemnation or taking by eminent domain of the Lot subject to Mortgage or of the Common Areas; or

d. any of the following matters come up for consideration or effectuation by the Association:

i. abandonment or termination of the Development established by this Declaration; or

ii. material amendment of the Declaration or the Articles or Bylaws of the Association.

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

5. Right to Examine Association Records. Any first Mortgagee shall have the same right to inspect the books and records of the Association; provided, that the foregoing shall not be deemed to impose upon the Association any obligation to cause special books, records, or financial statements to be prepared or to have its financial statements audited. Any first Mortgagee shall have the right to receive, upon written request, copies of such financial statements as may exist from time to time.

6. Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement. Upon such conveyance the Declarant shall have no obligation to make any reimbursement to Mortgagees.

### XIII. MISCELLANEOUS

1. 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 personally delivered or if mailed, registered or certified mail, postage prepaid, return

receipt requested, 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 Architectural Control Committee (exclusive of submissions provided in Section IX which submissions may be delivered to a Member of the Committee) may be given by delivering or mailing the same to the Managing Agent or any member of the Architectural Control Committee, or the Board, as the case may be.

2. Amendment. Except as provided below or in Article XII, this Declaration may be amended by:

a. the affirmative vote of a majority of the Owners; and

b. the written consent of Declarant, if such amendment is adopted at any time when Declarant holds Class B membership in the Association; and

c. the filing of an instrument for record in the office of the County recorder of Salt Lake County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of a majority of the Owners and, if required, has the written consent of Declarant.

3. 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 the Owners, whether present or represented by proxy at a meeting, 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 outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 3:

a. All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by the 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. Except as provided in the following sentence, 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. A change in ownership which would increase the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

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.

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

5. 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.

6. 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 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 Living Unit 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 govern the validity construction and enforcement of this Declaration.

7. Duration. The covenants and restrictions of this Declaration shall remain in effect for a term of twenty (20) years from the date this Declaration is filed in the office of the County recorder of Salt Lake County, Utah, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument filed in the office of the County Recorder, executed by any two (2) officers of the Association, certifying that the Owners of at least eighty percent (80%) of the Lots and their first Mortgagees, if any, voted in favor of such termination.

8. Declarant's Right to Amend. Until Declarant sells all Lots contained within the Property or until the expiration of two (2) years, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable: (a) to more accurately express the intent of any provisions of this Declaration in light of then existing circumstances or information; or (b) to better insure, in light of then existing circumstances

or information, workability of the arrangement which is contemplated by this Declaration.

9. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Survey Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

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

HARVARD PARK CORPORATION  
A Utah Corporation

ATTEST:

*Nancy D. Saunders*

By  
Its

*[Signature]*

Approved as to form this 29th day of September, 1987.

SALT LAKE CITY CORPORATION

ATTEST:

*Kathryn Marshall*  
Kathryn Marshall,  
City Recorder

By

*Palmer A. DePaulis*

APPROVED Palmer DePaulis  
Mayor

STATE OF UTAH

County of Salt Lake

SEP 29 1987  
CITY RECORDER

APPROVED AND FILED IN  
Salt Lake County Recorder's Office  
Date 9/28/87  
By *[Signature]*

On this 29th day of September, 1987, personally appeared before me *William D. Sloan*, who being by me duly sworn, did say that he is the President of HARVARD PARK CORPORATION, a Utah corporation, and that the foregoing Declaration was signed on behalf of said corporation by authority of a resolution of its Board of Directors, and he duly acknowledged to me that said corporation executed the same.

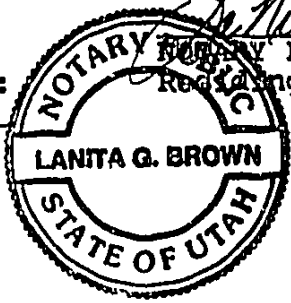
NOTARY PUBLIC  
NANCY D. SAUNDERS  
Commission Expires: January 9, 1990  
STATE OF UTAH  
County of Salt Lake

*Nancy D. Saunders*  
NOTARY PUBLIC  
Residing at: Salt Lake County

On this 29th day of September, 1987, personally appeared before me PALMER DePAULIS, who being by me duly sworn, did say that he is the Mayor of SALT LAKE CITY CORPORATION, a Utah Municipal Corporation, and that the foregoing Declaration was

signed on behalf of said corporation by authority of a resolution of its Board of Directors, and he duly acknowledged to me that said corporation executed the same.

My Commission Expires: APR 30 1992  
Residing at: Sh. County



HARVARD D. DKP



EXHIBIT "A"

PROPERTY DESCRIPTION

Beginning at a point 140.99 feet and North 89°57'20" East 1.10 feet from the Southeast corner of Lot 1, Block 27, FIVE ACRE PLAT "C", Big Field Survey, according to the Salt Lake City Engineer's Plat, and running thence North 0°27'00" East 544.59 feet; thence North 80°00'00" West 15.26 feet to the center line of Emigration Creek as originally located; thence along said center line of creek as follows: South 6°15'00" West 48.34 feet; thence South 24°57'00" West 180.04 feet; thence South 29°48'00" West 50.00 feet; thence South 49°23'00" West 122.00 feet; thence South 17°28'00" West 70.42 feet; thence South 89°57'20" West 10.85 feet; thence South 22°30'00" West 26.83 feet; thence South 20°28'00" West 65.51 feet; thence South 22°30'00" West 64.95 feet; thence leaving said creek North 89°57'20" East 299.43 feet to the point of beginning. This is subject to any existing right-of-ways and easements. Containing 1.81 acres.

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BYLAWS  
OF  
HARVARD PARK HOMEOWNERS ASSOCIATION

ARTICLE I

NAME AND LOCATION

The name of the corporation is HARVARD PARK HOMEOWNERS ASSOCIATION, hereinafter referred to as the "Association". The principal office of the Corporation in the State of Utah shall be located in at 2045 East 1300 South, Salt Lake City, Utah, but meetings of Members and directors may be held at such places within the State of Utah, County of Salt Lake, as may be designated by the Board of Directors.

ARTICLE II  
DEFINITIONS

Section 2.1 Association shall mean and refer to HARVARD PARK HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, which will own, operate and maintain the Common Areas within the Property.

Section 2.2 Board shall mean and refer to the board of Trustees of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association.

Section 2.3 Common Areas shall mean and refer to all property owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto.

Section 2.4 Declarant shall mean and refer to Harvard Park Corporation, a Utah corporation, its successors and assigns.

Section 2.5 Declaration shall mean the Declaration of Covenants, Conditions and Restriction applicable to the Property recorded in the office of the Recorder of Salt Lake County, State of Utah.

Section 2.6 Harvard Park Planned Unit Development or the Development, at any point in time, shall mean, refer to, and consist of the Property and all improvements thereon.

Section 2.7 Limited Common Areas shall mean those Common Areas designated in the Declaration and reserved for use with a specific Lot. Driveways, walkways and fenced patios designed and originally constructed for use with a specific Living Unit on a Lot and such additional walkways and/or modifications of original driveways, walkways and fenced patios as the Board shall approve, shall be designated as Limited Common Areas.

Section 2.8 Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

Section 2.9 Lot shall mean and refer to one of the separately numbered and individually described plots of land within the Property: (i) which is intended to be owned individually rather than by an association of Owners or in common by Owners of different Lots; and (ii) which is intended to be used as the site of Living Units.

Section 2.10 Member shall mean and refer to every person who holds membership in the Association.

Section 2.11 Mortgage shall mean any first mortgage, first deed of trust or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed or deed of trust; and Mortgagee shall mean any first mortgagee and any trustee or beneficiary of a first trust deed or deed of trust.

Section 2.12 Owner or Lot Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a free or an undivided fee interest in any Lot. Notwithstanding any applicable thereby relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgage, or a beneficiary trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure of any arrangement or proceeding in 13. thereof.

Section 2.13 Property shall mean and refer to the entire tract of real property covered by the Subdivision Plat, a description of which is set forth in Article III of the Declaration.

### ARTICLE III MEETING OF MEMBERS

Section 3.1 Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of

incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 8:00 o'clock, p.m. If the day for the annual meeting of the Members is a legal holiday, and the Board has previously determined that meeting on such legal holiday is inconvenient or impractical, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 3.2 Special Meetings. Special meetings of the Members may be called by or at the request of the president or by the Board of Trustees, or upon written request of the Members who are entitled to vote forty percent (40%) of all of the votes of the Class A membership.

Section 3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each Member entitled to vote thereafter addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.4 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, fifty percent (50%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws (i.e. assessments). If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 3.5 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

ARTICLE IV  
BOARD OF TRUSTEES: SELECTION AND TERM OF OFFICE

Section 4.1 Number. The affairs of the Association shall be managed by a Board of Trustees of not less than three

(3) individuals and not more than five (5) individuals who need not be members of the Association.

Section 4.2 Term of Office. At the first annual meeting, the members shall elect one of the directors (or two if more than three are to serve) for a term of one year, one of the directors (or two if more are to serve) for a term of two years and one (1) of the directors for a term of three years; and at each annual meeting thereafter the members shall elect the number of directors whose terms are to expire for a term of three years.

Section 4.3 Removal. Any Trustee may be removed from the Board, with or without cause, by a simple majority vote of the members of the Association. In the event of death, resignation or removal of a Trustee, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of this predecessor.

Section 4.4 Compensation. No Trustee shall receive compensation for any service he may render to the Association. However, any Trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 4.5 Action Taken Without a Meeting. The Trustee shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Trustees. Any action so approved shall have the same effect as though taken at a meeting of the Trustee.

#### ARTICLE V NOMINATION AND ELECTION OF TRUSTEES

Section 5.1 Nomination. Nomination for election to the Board of Trustees shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Trustees, and two or more Members of the Association or if such members do not exist or decline appointment, the Declarant. The Nominating Committee shall be appointed by the Board of Trustees prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Trustees as it shall in its discretion determine, but not less than the number of

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vacancies that are to be filled. Such nominations may be made among members or non-members.

Section 5.2 Election. Election to the Board of Trustees shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI  
MEETINGS OF TRUSTEES

Section 6.1 Regular Meetings. Regular meetings of the Board of Trustees shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Trustees.

Section 6.2 Special Meetings. Special meetings of the Board of Trustees shall be held when called by the president of the Association, or by any two Trustees, after not less than three (3) days notice to each Trustee.

Section 6.3 Quorum. A majority of the number of Trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII  
POWERS AND DUTIES OF THE BOARD OF TRUSTEES

Section 7.1 Powers. The Board of Trustees shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Areas, if any, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(c) declare the office of a member of the Board of Trustee to be vacant in the event such member shall be

absent from three (3) consecutive regular meetings of the Board of Trustees; and

(d) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 7.2 Duties. It shall be the duty of the Board of Trustees to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by forty percent (40%) of the Class A members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any Lot for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A charge of Fifteen Dollars (\$15.00) may be made by the Board for the issuance of each certificate. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Areas to be maintained.

ARTICLE VIII  
OFFICERS AND THEIR DUTIES

Section 8.1 Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Trustees, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 8.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Trustees following each annual meeting of the members.

Section 8.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 8.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 8.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.6 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 8.7 Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices



except in the case of special offices created pursuant to Section 8.4 of this Article.

Section 8.8 Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Trustees; shall see that orders and resolutions of the Board are carried out; shall sign all written instruments authorized and/or required by the Articles of Incorporation of the Association, these Bylaws or the Declaration and shall co-sign all checks and promissory notes.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Trustees; shall sign all checks and promissory notes of the Association; keep proper books of account; if the Board deems appropriate, cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

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ARTICLE IX  
COMMITTEES

The Association may appoint an Architectural Control Committee, as provided in the Declaration, and shall appoint a Nominating Committee, as provided in these Bylaws. In addition, the Board of Trustees shall appoint other committees as deemed appropriate in carrying out its purposes.

ARTICLE XI  
ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are and will be secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, such delinquency shall accrue interest at the rate of twelve percent (12%) per annum from the due date, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

ARTICLE XII  
AMENDMENTS

Section 12.1 These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B membership.

Section 12.2 In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

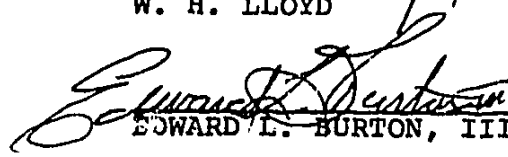
Section 12.3 Notwithstanding the provisions of Sections 12.1 and 12.2, Declarant reserves the right to amend these Bylaws at any time within seven (7) days years from the date the Declaration is recorded in the office of the Salt Lake County Recorder, if amendment is necessary to obtain secondary market lender approvals to facilitate financing of Living Units.

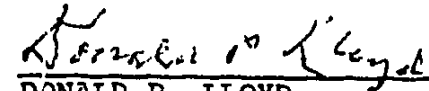
ARTICLE XIV  
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the Trustees of the Harvard Park Homeowners Association, have hereunto set our hands this \_\_\_\_ day of September, 1987.

  
\_\_\_\_\_  
W. H. LLOYD

  
\_\_\_\_\_  
EDWARD L. BURTON, III

  
\_\_\_\_\_  
DONALD P. LLOYD

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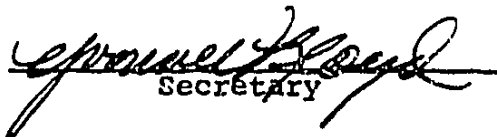
CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of the HARVARD PARK HOMEOWNERS ASSOCIATION, a Utah non-profit corporation, and,

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the \_\_\_ day of September, 1987.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed the seal of said Association this \_\_\_ day of September, 1987.

  
Secretary

4250

4531388  
01 OCTOBER 87 01:23 PM  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
HARVARD PARK CORPORATION  
REC BY: JANET WONG , DEPUTY

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