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AMENDED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
SANDY HIGHLANDS, A PLANNED UNIT DEVELOPMENT

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BOOK 6110 PAGE 2198

# SANDY HIGHLANDS DECLARATION

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**AMENDED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
SANDY HIGHLANDS, A PLANNED UNIT DEVELOPMENT**

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SANDY HIGHLANDS is made and executed this \_\_\_\_\_ day of February, 1989, by SANDY HIGHLANDS HOMEOWNER'S ASSOCIATION, hereinafter referred to as "Declarant" or "Association."

RECITALS

A. The Declarant herein is the incorporated association of all Lot and Fee Owners (the "Association") of that certain real property more particularly described in Article II hereof (the "Land").

B. Various improvements have been made to the Land so as to permit its use and operation as a Planned Unit Development. The construction of all such improvements has been completed in accordance with the information contained in the Map and original Declaration heretofore filed.

C. In January, 1979, C. Howard Alvy & Sons caused to be recorded the Declaration of Covenants, Conditions and Restrictions of Sandy Highlands, a Planned Unit Development in the office of the Recorder of Salt Lake County, State of Utah as Entry No. 3219519, in Book 4795, at Pages 846 through 857, inclusive (the "Declaration").

D. Under Article VI, Section 3 of the Declaration, C. Howard Alvy & Sons, its successors and assigns, reserved the right and created the means to amend the Declaration.

E. The Association has now approved the Amendment to the Declaration for Sandy Highlands (the "Amended Declaration") in accordance with the Declaration.

F. The Association intends by recording this Amended Declaration to continue to submit the Land, the Buildings, and all other improvements situated in or upon the Land to these restrictive covenants and to impose upon the Land mutually beneficial restrictions under a general plan of improvement for the benefit of all Lots within said Project and the Owners thereof as set forth in this instrument.

G. This Project will provide a means for ownership in fee simple of individual Lots and for ownership in fee simple of the Common Areas by the Association.

H. The Association has been delegated and assigned the powers of maintaining the Common Areas, administering and enforcing the covenants, conditions, and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

I. The Association shall manage all of the Common Areas and Lots contained in Sandy Highlands pursuant to a general plan and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitude, liens, and charges, all running with the land, and as set forth in the Amended Declaration.

J. The Association hereby declares that all of the Lots shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following easements, restrictions, covenants, conditions, and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness, and desirability of all Lots in Sandy Highlands, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Development, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Land, the Lots and shall be binding upon all persons having any right, title or interest in any Lot or Lots, in their heirs, successors and assigns; shall inure to the benefit of and be binding upon Association, its successors-in-interest and each Owner and his respective successors in interest; and may be enforced by any Owner and his successors in interest, and by the Association.

K. The Association desires hereby to satisfy all of the requirements for V.A., F.H.A., and other federal financing of Sandy Highlands and the individual Lots within this Project.

NOW THEREFORE, the Association hereby declares that all of the land described herein shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are established for the purpose of protecting the value and desirability of the Land, and which shall run with the land and be binding on all parties having any right, title or interest therein or any part thereof, their heirs, successors and assigns, and shall enure to the benefit of each owner thereof.

#### I. DEFINITIONS

When used in this Declaration (including in those portions hereof headed "Recitals," Exhibit "A," Exhibit "B," and Exhibit "C," respectively) each of the following words or terms shall have the meaning indicated.

1.1 Association shall mean Sandy Highlands Homeowner's Association, an incorporated association of Lot owners of the Sandy Highlands Project, organized to be the Association referred to herein, taken as or acting as a group in accordance with this Declaration.

1.2 Assessment Year shall mean calendar year.

1.3 Board of Trustees, Board of Directors, the Board, Also Sometimes Known as the Executive Committee, Homeowner's Committee, Executive Committee, or Committee shall mean the governing board of the Association, appointed or elected in accordance with this Declaration.

1.4 Building or Buildings shall mean and refer to the structures containing or to contain Lots, the principal materials of construction being brick, concrete, steel and glass as shown on the Map.

1.5 Building Number shall mean and refer to the number, letter, or combination thereof (if any) which designates a building in the attached Exhibit "A" and on the Map.

1.6 By-Laws shall mean and refer to the By-Laws of the Association. The initial applicable By-Laws shall be in the form set forth in Exhibit "C" and made a part thereof.

1.7 Capital Improvements shall mean and refer to all costs for additions made or to be made to the Common Areas and all costs incurred for an amelioration of existing Common Areas amounting to more than the cost of mere repairs or the cost of replacement of normal wear and tear, and costs intended to enhance the value, beauty and/or utility of such Common Areas and/or to adapt it for new or other purposes.

1.8 Capital Improvement Assessment shall mean a charge against each Lot Owner and his Lot, representing a portion of the costs of the Association for the installation or construction of any improvements of the Common Area pursuant to the provisions of this Declaration.

1.9 Common Areas and Facilities, Common Areas, or Amenities shall mean, refer to, and include all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners, described more particularly in Exhibit "D" attached hereto and incorporated herein by this reference.

Without limited the generality of the foregoing, the Common Areas shall include:

(a) The real property and interests in real property subject to this Declaration, but excluding individual Lots.

(b) All Common Areas designated as such on the Map.

(c) All Limited Common Areas and Facilities designated as such on the Map, including but not limited to the garages, patios and balconies designated for the exclusive use of owners or occupants of a particular Lot.

(d) All foundations, columns, girders, beams, supports, perimeter walls, roofs constituting a portion of or included in the improvements which comprise a part of the Project; and any Clubhouse halls, corridors, stairs, hallways, entrances, exits, restrooms, lounge, and equipment rooms.

(e) All installations for and all equipment connected with the furnishing of Project utility services such as electricity, heating, air conditioning, water, and sewer.

(f) All tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus, installations, and facilities included within the Project and existing for common use.

(g) The swimming pool, tennis court, laundry rooms, outdoor lighting, fences, landscaping, walkways, open parking spaces or carports, and roads.

(h) Any utility pipe or line or system servicing more than a single unit together with all ducts, wires, conduits, and other accessories used therewith.

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

(j) All repairs to and replacements of any of the foregoing.

1.10 Common Assessment shall mean the charge against each Owner and his Lot, representing a portion of the total cost of the Association of maintaining, improving, repairing, replacing, managing, and operating the Common Area.

1.11 Common Expenses shall mean and refer to all sums which are expended on behalf of all the Owners and all sums which are required by the Association to perform or exercise its functions, duties, or rights under the Declaration, the By-Laws, the management agreement for the operation of the Project, if any, and such Rules and Regulations as the Association may from time to time make and adopt. By way of illustration, but not in limitation, Common Expenses shall include (i) all charges for power and light, heating and air

conditioning, subject however, to the right and power of the Association to vary the charges assessed for electric power or gas as provided in of this Declaration; (ii) expenses of administration, maintenance, operation, repair, and replacement of those elements of the Common Areas that must be maintained and/or replaced on a periodic basis and reserves as may be from time to time established by the Association; (iii) expenses agreed upon by the Association, or the Owners and lawfully assessed against the Owners in accordance with the Declaration; (iv) expenses declared to be Common Expenses by this Declaration or the By-Laws; and (v) any valid charge against the Project as a whole.

1.12 County The term "County" shall mean the County of Salt Lake, State of Utah.

1.13 Declarant shall mean and refer to the Association or any successor or assign who comes to stand in the same relation to the Project as did its predecessor.

1.14 Declaration shall mean and refer to this instrument as the same may hereafter be modified, amended, supplemented, or expanded in accordance with law and the provisions hereof.

1.15 Emergency shall mean a situation or occurrence which creates an imminent threat to the health, safety or welfare of any person in the Project.

1.16 Family shall mean and refer to a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or up to two (2) unrelated persons, who maintain a common household in a Lot.

1.17 First Mortgage shall mean a mortgage which has a first priority position under the recording statutes of the State of Utah over all other mortgages encumbering a specific Lot.

1.18 First Mortgages The term "First Mortgage" shall mean a Mortgage of a First Mortgage.

1.19 Improvement shall mean all structures and appurtenances to the Land of every type and kind, including but not limited to buildings, walkways, sprinkler pipes, garages, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

1.20 Invitee The term "Invitee" shall mean any persons whose presence within the Project is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees or invitees of Owners, tenants, or lessees.

1.21 Land shall mean the land upon which the Project is situated, as particularly described in Article II of this Declaration.

1.22 Limited Common Areas shall mean and refer to those Common Areas designated herein (or in any Supplement hereto) or on the Map (or any supplement thereto) as reserved for the use of a certain Lot or Lots to the exclusion of the other Lots.

1.23 Lot shall mean and refer to a separate physical part of the Property intended for independent ownership and use, consisting of a plot of land, shown on the Map.

1.24 Manager shall mean and refer to the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the business and affairs of the Association and the Project.

1.25 Member shall mean any person or entity holding a membership in the Association as provided herein.

1.26 Mortgage The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

1.27 Mortgagee The term "Mortgagee" shall mean a Mortgagee under a Mortgage as well as beneficiary under a deed of trust.

1.28 Owner or Lot Owner shall mean the person or persons, including the Declarant, owning in the fee simple a Lot of the Project, as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah. However, the term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) but shall apply jointly and severally to any person or persons purchasing or selling a Lot under contract provided that an executed copy of such contract is furnished to the Secretary of the Association.

1.29 Percentage Interest shall mean and refer to that percentage which is equal to the ratio between the size of a Lot and the aggregate size of all Lots in the Project.

1.30 Person shall mean a natural individual or any other entity with the legal right to hold title to real property.

1.31 Project shall mean Sandy Highlands, a Planned Lot Development.

1.32 Property shall mean and refer to the Land, the Buildings, all improvements and structures on the Land, all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

1.33 Reconstruction Assessment shall mean a charge against each Owner and his Lot, representing a portion of the costs of the Association for the reconstruction of any portion or portions of the improvements of the Common Area pursuant to the provisions of this Declaration.

1.34 Record of Survey Map or Map shall mean and refer to the Record of Map or Record of Survey Map heretofore executed, acknowledged, and recorded.

1.35 Record, Recorded, Filed and Recordation shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of County Recorder of the County of Salt Lake, State of Utah.

1.36 Residence shall mean a dwelling on any Lot designed for human occupancy.

1.37 Size shall mean and refer to the area of floor space within a Lot, in square feet. Declarant's determination of the Size of a Lot, as set forth in this Declaration or in any amendment or supplement hereto pursuant to Article VI hereof shall be conclusive.

1.38 Special Assessments shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, equal to the costs incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

1.39 Tract shall mean Sandy Highlands, a Planned Lot Development.

1.40 Unit or Unit Number shall mean the number, letter, or combination thereof which designates a Lot in attached Exhibit "A" and on the Record of Survey Map.

1.41 Unit shall mean and refer to a separate physical part of the Property intended for independent ownership and use, consisting of a plot of land, shown on the Map. (Generally referred to herein as a "Lot").

## II. SUBMISSION

There is hereby submitted to the restrictive covenants, conditions, restrictions and provisions of the Declaration, the following described real property situated in Salt Lake County, State of Utah and known as Sandy Highlands:

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

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the Land.

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; any mineral reservations of record and rights incident thereto; all instruments of record which affect the real property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Map or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the Land at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

RESERVING UNTO THE ASSOCIATION, however, such easements and rights of ingress and egress over, across, through, and under the Land and any improvements now or thereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) To construct and complete each of the Lots, Buildings and all of the other improvements described in this Declaration or in the Map recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; (ii) To improve portions of the Land with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as such assignee or successor may reasonably determine to be appropriate. If pursuant to the foregoing reservations, the Land or any



improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire seven years after the date on which this Association is filed for record in the office of the County Recorder of Salt Lake County, State of Utah.

### III. IMPROVEMENTS ON LAND

3.1 Description of Improvements. The improvements included in the Project are now or will be located upon the Tract. The significant improvements contained in the Project include certain Buildings and Lots; a swimming pool and related facilities; a clubhouse containing a recreational area, kitchen, office, changing rooms and restrooms for men and women, and storage area for pool equipment; common parking areas; garages; driveways. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Survey Map. The Project also contains other improvements of a less significant nature, such as outdoor lighting, fencing, landscaping, sidewalks, and walkways. The Survey Map shows the number of stories and the number of Lots which are contained in the Buildings included in the Project.

3.2 Description of Legal Status of Lots. The Map shows the Lot designation, its location, dimensions from which size may be determined and the Common Areas to which it has immediate access.

3.3 Contents of Exhibit "B". Exhibit "B" to this Declaration contains the following information with respect to each Lot contained in the Project; (i) the Lot Designation; (ii) its size; and (iii) the Percentage Interest which is appurtenant to the Lot.

### IV. NATURE AND INCIDENTS OF P. U. D. OWNERSHIP

4.1 Definition. A "P.U.D." shall mean and refer to a Planned Unit Development.

4.2 Ownership of Lots. Title to each Lot in the Project shall be conveyed in fee to an Owner. If more than one person and/or entity (other than the Association) owns an undivided interest in the same Lot, such persons and/or entities shall constitute one Owner.

4.3 Title. Title to a Lot may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, without limitation, joint tenants or tenancy in common.

4.4 Inseparability. No part of a Lot or of the legal rights comprising ownership of a Lot may be separated from any other part thereof during the period of ownership prescribed herein, so that each Lot shall always be conveyed, devised, encumbered, or otherwise affected only as a complete Lot. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Lot shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Lot, together with all appurtenant right created by law or by this Declaration.

4.5 Partition Not Permitted. The Common Area shall be owned in common by all the Owners of Lots, and no Owner may bring any action for partition thereof.

4.6 Owner's Rights to Common Areas. Subject to the limitations contained in this Declaration, any Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy the Limited Common Areas designated herein for exclusive use by such Owner.

4.7 Owner's Rights with Respect to Interiors. Although no Owner shall do anything to impair the integrity of the structure of any Building or Common Area, each Owner shall have the exclusive right at his sole cost and expense to maintain, repair, paint, replace, tile, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of his Lot and all walls, ceilings, floors, and doors within such boundaries.

4.8 Ownership of Common Area. Title to the Common Area has been or shall be conveyed in fee to the Association.

4.9 Easement for Access to Lots. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas necessary for access to his Lot, and to the Limited Common Areas, if any, designated for use in connection with his Lot, and such rights shall be appurtenant to and pass with title to each Lot.

4.10 Easement for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot or Lots, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Lot or Lots, an easement for such encroachment and for the maintenance of the same shall and does exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building, by error in the Map, by settling, rising, or shifting of the earth, or by change in position caused by repair or reconstruction of the Project or any part thereof.

4.11 Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above, and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all Common Areas and utilities serving the Community or any portion thereof, for emergencies and for repairs to the gas, water, sanitary sewer, telephone, electrical or storm drainage systems. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment or property related to the providing of any such system, utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement. Except in the case of an emergency, reasonable notice of intent to use this easement for access to any Lot shall be given to the Lot owner or occupant.

4.12 Owner's Right to Support. Each Owner shall have the right to the horizontal and lateral support of his Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

4.13 Owner's Easements for Common Area. Every Owner shall have a non-exclusive right of easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend an Owner's or Occupant's privilege to use any amenities or recreational facilities; and

(b) the right of the Association to dedicate and/or grant easements over all or any portion of the Common Area.

4.14 Easements to Community Association. There are hereby granted to the Association, and its duly authorized agents and representatives, such easements as are reasonable and necessary to perform its duties and obligations as set forth in the Declaration and By-Laws. Provided, however, the Association does not have the right without the prior consent of the Owner or Occupant to enter any Lot except in the case of an emergency.

4.15. Easements Deemed Created. The ownership interests in the Common Area and Lots described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements granted herein shall be deemed to be established upon recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners

and their Lots superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.

4.16 Additional Easements. Notwithstanding anything expressly or impliedly to the contrary, this Declaration shall be subject to all easements granted by the original Declarant or Association for the installation and maintenance of utilities and drainage facilities necessary for the development of the Project.

4.17 Admission Charges. The Association is granted by the right and power to charge reasonable admission and other fees for the use of any recreational facility or amenities situated upon the Common Area.

4.18 Delegation. Any non-occupant Owner may delegate his rights in and to the Common Area, and any recreational facilities or amenities to any actual occupant of his Lot provided the Owner has paid all Common Area fees and is not in violation of the Declaration or By-Laws.

#### V. UNITS, COMMON AREAS, AND LIMITED COMMON AREAS

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

Lot No. \_\_\_\_\_ contained within the Sandy Highlands Project as the same is identified in the Map recorded in Salt Lake County, State of Utah, as Entry No. \_\_\_\_\_ (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Amended Declaration of Covenants, Conditions and Restrictions of the Sandy Highlands Project recorded in Salt Lake County, State of Utah, as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ (as said Declaration may have heretofore been amended or supplemented).

Such description will be construed to describe the Lot, and to incorporate all the rights incident to ownership of a Lot and all the limitations on such ownership as described in the Declaration.

5.2 Maintenance of Lots. Each Owner shall keep the interior of his Lot, including without limitation all interior walls, doors, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in good state of repair. If any such Lot shall develop an unclean or unsanitary

condition, or fall into a state of disrepair, and in the event that the Owner of such Lot shall fail to correct such condition or state of disrepair promptly following written notice from the Association, the Association shall have the right to petition any court of competent jurisdiction, for legal or equitable relief. Provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair.

5.3 Separate Mortgages by Owner. Each Owner shall have the right separately to mortgage or otherwise encumber his Lot. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof. Any Mortgage or other encumbrances of any Lot within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owners whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

5.4 Taxation of Lots. Each Lot within the Project, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Area shall be apportioned among the Lots in proportion to the Percentage Interests. All such taxes, assessments, and other charges of each respective Lot shall be separately levied against the Owner thereof. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.

5.5 Maintenance and Use of Common Areas and Limited Common Areas.

(a) The Use Of The Common Areas shall be limited to the Lot Owners or in the case of a non-owner occupant to the actual occupant, and to their guests and invitees.

(b) The Use of the Limited Common Area shall be restricted to the Owner of the Lot to which it is appurtenant, his tenants, residents, and to their guests, invitees, and licensees. The use of the Common Areas and Limited Common Areas shall be governed by the Declaration, By-Laws, and the Rules and Regulations as initially established by the Association and as adopted and amended from time to time by the Homeowner Committee.

(c) The Association Shall Provide For Such Maintenance and Operation of the Common Areas and Limited Common Areas as may be reasonably required to make them appropriately usable in connection with the Lots and to keep them clean, functional,

attractive, and in good condition and repair (hereinafter collectively called the "Maintenance"), except as herein expressly otherwise provided. Anything to the contrary notwithstanding, the Association shall provide Maintenance for the large garage doors on each Lot and the Owners shall provide maintenance for the small side garage doors. While Owners or occupants do not have a duty to maintain the Limited Common Areas, they do have an obligation to keep them clean and attractive.

(d) The Owners shall not be permitted to modify, alter, add on to, build on to, or otherwise change any of the Limited Common Areas without the prior written consent of the Board.

(e) Limited Common Areas may only be converted to Common Areas and Common Areas converted to Limited Common Areas upon the vote and unanimous consent of all Lot Owners.

5.6 Mechanic's Liens. No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or his agent or sub-contractor shall create any right to file a notice of mechanic's lien against the Lot of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Areas. Further, liens for money judgments against the Association are to be indexed in the public records under the name of the Association and the name of the Community. A Lot Owner may pay the pro rata share of the amount of any lien against the Association and this shall release the lien against his or her Lot. If the Association has mortgaged the Common Area and thereafter defaults, the mortgagee must exercise its rights against the Common Area.

## VI. THE ASSOCIATION

6.1 Membership. Every Owner shall be automatically a member of the Association. If title to a Lot is held by more than one person, the membership related to this Lot shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which the title to the Lot is held. An Owner shall be entitled to one membership for each Lot owned by him. Each such membership shall be appurtenant to the Lot upon which it is based and shall be transferred automatically by conveyance of that Lot. No person or entity other than an Owner may be a member of the Association, and the Articles of Incorporation or By-Laws of the Association shall so state and shall in addition state that the membership in the Association may not be transferred except in connection with the transfer of a Lot; provided however, that the rights of membership may be assigned to a mortgagee as further security for a loan secured by a mortgage on a Lot or by a deed of trust.

6.2 Executive Committee. The Executive Committee or Board of Trustees of the Association, also known sometimes as the Board of Directors, Homeowner's Committee, Executive Committee, or Committee shall consist of five (5) members. In addition to individual Lot Owners, partners of partnerships and officers of corporations owning Lots shall be eligible for membership on the Board. The Board shall manage the Project, directly or by delegation.

6.3 Voting. Each member shall be entitled to one vote for each Lot owned.

## VII. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

7.1 Common Areas. The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive, sanitary condition, order and repair; provided, however, that each Owner of a Lot shall keep his Limited Common Area, including the patios, balconies, decks, storage sheds, garages and parking stalls designated for use in connection with his Lot, in a good, clean, sanitary, and attractive condition. Provided, however, that the Limited Common Areas must be maintained in such a manner as their appearance remains uniform in style, type, color and construction. The Association shall be responsible for the maintenance and repair of all Common Areas. The cost of such management, operation, maintenance, and repair by the Association shall be borne as provided in Article IX.

7.2 Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel of the Association as it shall be determined to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish trash collection, snow removal, ground maintenance, and other common services to each Lot. The cost of such services shall be borne as provided by Article IX.

7.3 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as the

respective Percentage Interests. Such interest shall not be transferable except with the transfer of a Lot. A transfer of a Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it was intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Lot under foreclosure shall entitle purchaser to the interest in such personal property associated with the foreclosure Lot.

7.4 By-Laws. The Association shall have those rights, powers, duties, and obligations set forth in the By-Laws.

7.5 Rules and Regulations. The Association may make reasonable Rules and Regulations governing the use of the Lots and of the Common Areas. The Rules and Regulations shall be consistent with the rights and duties established in this Declaration. The Rules and Regulations may include, but shall not be limited to the establishment of aesthetic standards and guidelines, procedures to issue and enforce traffic and parking citations, to levy and collect fines, and to tow away vehicles parked in unauthorized zones or in an unauthorized manner; the procedure to enforce owner and non-owner occupant use violations, and to evict offending non-owner occupants; and the procedure to enforce remedies for non-payment of assessments. The Association may suspend any Owner's voting rights in the Association or the Owner's (or his residents, tenants, guests or invitees) right to use the recreational facilities or amenities in any period or periods during which such Owner fails to comply with such Rules and Regulations, or with any other obligations under this Declaration. The Association may also take judicial action against the Owner or Occupant to enforce compliance with such Rules and Regulations or other obligations, or to obtain damages (including reasonable attorney fees) for non-compliance, all to the extent permitted by law.

7.6 Granting Easements. The Association may, without a vote or consent of the Owners, or of any other person, grant or create on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Areas.

7.7 Right of Entry. The Association shall have the right, in addition to and not in limitation of any other rights it may have, to enter into any Lots in an emergency. This qualified right of entry may be exercised by any member of the Board, any Officer, Agent, Employee or Manager, and by any police officer, fire fighter, ambulance personnel, or similar emergency personnel in the performance of their respective duties.

7.8 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-



Laws, by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

7.9 Board Authority. The Board of Directors is specifically authorized to exercise the powers and duties of the Association in all instances as fiduciaries of the Lot Owners, except that the Board may not amend the Declaration, terminate the common interest community, elect its own members, or determine the qualifications, powers, or terms of the members of the Board. The Board is also authorized to prepare the association's annual budget, except that a meeting of the members is required prior to approval of the budget. The budget is deemed approved unless disapproved at the meeting by a majority of all unit owners, regardless of whether a quorum is present. The Board is authorized on behalf of the association to impose sanctions for violation of the Declaration or By-Laws, but is required to give basic due process rights to violating owners before instituting fines.

#### VIII. ASSESSMENTS

8.1 Agreement to Pay Assessment. Each Lot Owner by consenting to this Declaration or by the acceptance of a deed to any Lot, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with all other Owners and with the Association to pay to the Association all assessments, including but not limited to annual Common Area Assessments or Common Expenses, Capital Improvement Assessments, Special Assessments, and Reconstruction Assessments (referred to hereafter collectively as "assessments").

Subject to provisions of this Declaration protecting First Mortgagees, the personal obligation for delinquent assessments shall pass automatically to the successors in interest of such Owner.

The Board shall establish a federally insured bank account or accounts (e.g. the "Sandy Highlands Homeowners Association Fund") into which shall be deposited all monies paid to the Association hereby, and from which disbursement shall be made, as provided herein, by the Board in the performance of its duties under the provisions of this Declaration. This Fund may include an Operating Fund for current expenses of the Association, and a Common Area Reserve Fund for major replacements, painting, and repairs (which would not reasonably be expected to recur on an annual or less frequent basis) of the Common Areas to the extent necessary under the provisions of this Declaration.

Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

**8.2 Purpose of Common Assessments.** The assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation, and welfare of the Owners and for the improvement and maintenance of the Common Areas.

The Assessment shall also be used to create an adequate reserve to be spent as appropriate for maintenance and repairs of the Common Areas, capital improvements, and replacement of those elements of the Common Areas that must be replaced on a periodic basis and may be paid for in regular installments rather than by special assessments.

Nothing in the Declaration shall be construed in such a way as to permit the Association to use any assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Project. Nor shall anything contained herein limit, preclude, or impair the establishment of additional Funds by the Association so long as the amounts deposited into any such Fund are earmarked for specified purposes authorized by the Declaration.

**8.3 Annual Common Area Assessments.** The total annual Common Area Assessment against all Lots shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas or furnishing utility services (including power and light, heating and air conditioning) to the Lots, which estimates may include, among other things, expenses of management, grounds maintenance, taxes and special assessments, until the Lots are separately assessed as provided herein; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; common lighting and heating; water charges; and trash collection. If the estimated sums prove inadequate for any reason, the Board of Trustees may, at any time, levy supplemental Common Assessments which shall be assessed against the Owner of each Lot in accordance with his or her Percentage Interest.

**8.4 Capital Improvement and Reconstruction Assessments.** In addition to the Common Assessments authorized above, the Board may levy, in any assessment year, a Special Assessment, Capital Improvement Assessment or Reconstruction Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a Capital Improvement or other such addition upon the Common Area, including fixtures and personal property related thereto. Additions or capital improvements to the Project which cost no more than Five

Thousand Dollars (\$5,000.00) may be authorized by the Executive Committee alone. Except in the case of an emergency, additions or capital improvements the cost of which will exceed such amount must, prior to being constructed or accomplished, be authorized by the assent of two-thirds (2/3) of members of the Association.

8.5 Rate of Assessment. Anything to the contrary notwithstanding, all Common or Special Assessments, Capital Improvement Assessments, and Reconstruction Assessments provided for in this Article shall be apportioned among all Owners in proportion to their respective Percentage Interest in the Common Areas.

8.6 Date of Commencement of Common Assessments: Due Date. The obligation to pay assessments shall commence on the first day of the month following the closing on the purchase of the Lot.

The Board shall fix the amount of the annual Common Assessment against each Lot at least thirty (30) days in advance of each Common Assessment period.

Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto at least thirty (30) days prior to the effective date of such change. The due date shall be established by the Board. The Board shall also have discretion to permit monthly or installment payments; however, a missed installment shall automatically make the entire annual assessment immediately due and payable without the requirement of any additional notice.

The Association shall, upon demand, and on a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid.

8.7 Lien for Assessments. The following applies to all Lots and to each owner without exception:

(a) All sums assessed to any Lot pursuant to this Declaration in general and this Article in particular, together with interest thereon, as provided herein, shall be automatically secured by a lien on such unit in favor of the Association, even if no notice of lien is filed with the County Recorder.

Such lien shall be superior to all other liens and encumbrances on such Lot, except for: (i) valid tax and special assessment liens on the Lot in favor of any governmental assessing authority; and (ii) a lien for all sums unpaid on a

First Mortgage on any Lot, or on any Mortgage to the Association duly recorded in the official records of Salt Lake County, State of Utah, including all unpaid obligatory advances to be made pursuant to such Mortgage and all accounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument. All other mortgages or liens acquiring liens on any Lot after this Declaration shall have been recorded in said records, including all second, third, and subsequent mortgages, shall be deemed to consent that such liens shall be inferior to future liens for unpaid assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such mortgages or liens.

(b) As set forth with more particularity below, to evidence a lien for sums assessed pursuant to this Article, the Association may also prepare a written Notice of Lien setting forth:

- (1) the amount of the assessment;
- (2) the date due;
- (3) the amount remaining unpaid;
- (4) the name of the reputed Owner of the Lot; and
- (5) a description of the Lot.

Such Notice shall be signed by the Association, or its designee, and may be recorded in the office of the County Recorder of Salt Lake County, State of Utah. No Notice of Lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial or non-judicial foreclosure by the Association in the same manner in which Mortgages or Trust Deeds on real property may be foreclosed in Utah.

In the event of foreclosure, the Owner shall be obligated to pay, and the automatic assessment lien shall cover, all costs and expenses including but not limited to all recording costs, mailing fees, foreclosure report costs, attorney fees, and trustee's fees.

The Owner shall also be required to pay, and the lien shall also cover, all after accruing assessments including but not limited to those accruing during the foreclosure process.

(c) If the lien is foreclosed non-judicially as a trust deed, then each Owner hereby appoints the Attorney for the Association or such other person as the Board may designate as Trustee.

(d) A Release of Notice of Lien shall be executed by the Association and recorded in the official records of the County

Recorder of Salt Lake County, State of Utah, upon payment of all sums secured by a lien, including all recordation costs and attorney fees made necessary by the filing, which has been made the subject of a recorded Notice of Lien.

(e) Any encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association, including priority, with respect to such lien.

(f) Each Owner hereby assigns to the Association as additional security, all of his right, title and interest in and to all rents, issues, royalties, and profits of his Lot and to any of Owner's personal property located thereon. Until Owner shall default in the payment of said obligation or in the performance of any agreement hereunder, Owner shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Owner shall default as aforesaid, Owner's right to collect any of such moneys shall cease and the Association shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of the Association at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by the Association of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by the Association to collect, shall be, or be construed to be, an affirmation by the Association of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of any lien or charge to any such tenancy, lease or option, nor a waiver of any claim against Owner and shall be deemed exclusively to be an attempt by the Association to mitigate damages. This Assignment shall be prior and superior to any Trust Deeds with Assignment of Rents except that of the First Mortgage.

8.8 Collection of Unpaid Assessments: Procedure. The following applies to the collection of any past due fees.

(a) Effect. Any Common Assessment, Capital Improvement Assessment, Special Assessment or a Reconstruction Assessment, or installment thereof, not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of at least eighteen percent (18%) per annum. If any assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor, may be required further by the Board to pay a late charge of Five Dollars (\$5.00) or five percent (5%) of the delinquent amount, whichever is greater.

The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, or pursue both remedies.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by the abandonment of his Lot.

If any assessment is not paid within thirty (30) days after its due date, the Board shall mail a notice or delinquency to the Owner and to each Mortgagee who has requested a copy of the notice. The notice shall specify:

- (1) the fact that the installment is delinquent;
- (2) the action required to cure the default; and
- (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured.

If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board may, at its option, enforce the collection of the assessment and all charges thereon in any manner authorized by law and this Declaration.

(b) Foreclosure. The lien for non-payment expenses may be enforced by sale or foreclosure of the Lot Owner's interest in any Lot by the Manager, Executive Committee, their agents or designees.

The sale or foreclosure shall be conducted in the same manner as foreclosures of deeds of trust or mortgages or in any other manner permitted by law.

In any foreclosure or sale, the Lot Owner shall pay all costs and expenses of such proceedings, including reasonable attorneys' fees.

The Owner shall also be obligated to pay a reasonable rental for the Lot. The Plaintiff in a judicial foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security.

The Association, through its duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the Lot.

(c) Lawsuit for Money Judgment. If a Common Assessment remains unpaid for ninety (90) days after its due date, the Board should commence a civil action to obtain a money judgment against the defaulting Owner.

(d) Suspension of Rights. In addition, the Board has the right and power to suspend the privileges of any Owner, occupant or guest to use the amenities if the Owner or occupant has breached the Declaration or is otherwise in default.

(e) Curing of Default. Upon the timely curing of any default for which a Notice of Lien was filed by the Association, the Association or its agent or representative shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a Notice of Release of Lien preparation fee, to be determined by the Association, to cover the cost of preparing and recording such Release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed Ten Dollars (\$10.00).

(f) Cumulative Remedies. The liens and foreclosure rights of the Association shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including the right to file a suit to recover a money judgment against the Owner for unpaid assessments, as above-provided.

(g) Subordination of the Lien to Mortgages. Any lien provided for herein shall be subordinate and junior to the lien of any first mortgage (meaning any recorded mortgage with first priority over all other mortgages encumbering the Property), on any Lot on which the assessment came due.

Sale or transfer of any Lot shall not affect the lien. However, the sale or transfer of any Lot pursuant to a first mortgage or trust deed foreclosure, shall extinguish the lien of such assessments as to installments which came due prior to such sale or transfer. However, no sale or transfer shall relieve such Lot from liability for any installments of assessments thereafter becoming due or from the lien thereof.

(h) Bankruptcy. Post Bankruptcy Petition Common Area Assessments shall be the obligation of the Owner of the Lot to pay even though the first or a subsequent mortgage may thereafter foreclose on the Lot and the Trustee may have abandoned his interest in the same.

(i) Procedural Discretion of Board. The Board shall have the right and power to establish a different procedure for payment and collection of assessments, including but not limited to

the ability to modify due dates, grace periods, and drop-dead lines where required.

8.9 Personal Obligation of Owner. The amount of any assessment against any Lot shall be the personal obligation of the Owner thereof to the Association.

Suit to recover a money judgment for this personal obligation shall be maintainable by the Association without foreclosing or waiving any lien securing the same.

No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Lot.

8.10 Statement of Account. Upon payment of a reasonable fee not to exceed Ten Dollars (\$10.00), or such other amount as the Act may allow, and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot; the amount of the current yearly assessment and the date that such assessment becomes or became due; credit for advanced payments or pre-paid insurance premiums; and such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquires its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the twenty (20) day period provided herein and thereafter an additional written request is made by such purchaser, the request is not complied with within ten (10) days, and the purchaser subsequently acquires the Lot.

8.11 Land Sale Contracts: Personal Liability of Legal Title Holder and Equitable Title Holder. Anything to the contrary notwithstanding, where the Owner of a Lot transfers, assigns, leases, sells, or otherwise conveys his Lot to another by means of a Uniform Real Estate Contract, Land Installment Contract, or other contractual device, both Seller and Purchaser, and both legal-title-holder and equitable-title-holder, shall be jointly and severally liable to the Association for all assessments which accrue during the term of the contract.

8.12 Personal Liability of Purchaser for Assessments. A Purchaser of any Lot shall be jointly and severally liable with the Seller for



all unpaid assessments against the Lot up to the time of the grant or conveyance, without prejudice to the Purchaser's right to recover from the Seller the amount paid by the Purchaser for such assessments.

8.13 Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

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

8.14 Notice and Quorum. Written notice of any meeting called for the purpose of creating a regular or Common Area Assessment shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast, fifteen percent (15%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

#### IX. INSURANCE

9.1 The Association shall secure and at all times maintain at least the following insurance coverages where reasonably available:

(a) Hazard Coverage. All risk coverage has become difficult, if not impossible, to obtain. A multi-peril or All-risk policy or policies, if reasonably available, or if not fire and extended coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location, and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost). Each such policy shall contain the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagors as their interests may appear. The assured shall be the Association as a trustee for the Lot Owners, or their authorized representative. Such insurance must provide protection against at least the following: loss by fire and other hazards covered by the standard extended coverage.

(b) Public Liability. A comprehensive policy of public liability insurance covering all of the Common Areas insuring the

Association, the Board of Trustees, the Manager, and the Lot Owners against any liability incident to the ownership, use, or operation of the Common Areas and public ways of the Project or any of the Lots which may arise among themselves, to the public, or to any invitees, or tenants of the Project, or of the Lot Owners. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for personal property, injury, and/or property damage arising out of a single non-owned and hired automobile and liability for property of others. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of the Association or other Lot Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private and institutional mortgage investors for similar projects in location, construction, and use.

(c) The Association shall purchase and maintain Directors and Officers Liability Insurance (Errors and Omissions Insurance) for all its directors, officers and employees in types and amounts as the Board determines appropriate.

(d) Workmen's Compensation Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(e) Fidelity Insurance or Bond. A blanket fidelity bond shall be maintained by the Association for all officers, directors, and employees of the Association and all persons handling, or responsible for, funds of or administered by the Association. When a management agent has the responsibility for handling or administering funds of the Association, the management agent shall be required to maintain such fidelity bond coverage. The fidelity bond shall name the Association as a obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all Lots plus reserve funds. The bond shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the management agent, shall be paid by the Association as a Common Expense. The bond shall provide that they may not be cancelled or

subsequently modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association. The bonds shall provide that first mortgagees, upon request, shall receive notice of cancellation or modification.

(f) Flood, Mud Slide, and Soil Erosion Insurance. The Association shall purchase and maintain flood, mud slide, and soil erosion insurance if (1) it is located in an identified special flood hazard area, including an area of mud slides and flood-related soil erosion, designated by the Federal Emergency Management Administration; and if (2) such insurance is available. The amount of such insurance required shall be the maximum amount available under the National Flood Insurance Act of 1968, as amended, but not to exceed the insurable value of the property.

(g) All other insurance required for conventional, F.H.A. or V.A. financing or necessary to fully protect the interests of the members of the Association.

9.2 The following additional provisions shall apply with respect to insurance:

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

(b) All insurance policies shall be written by a company holding a financial rating of Class VI or better as designated in Best's Insurance Reports. Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where (i) under the terms of the carrier's charter, by-laws or policy contributions or assessments may be made against the Borrower or the Mortgagees; or (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Mortgagee or the Borrower from collecting insurance proceeds.

(c) The Association shall have the authority to adjust losses.

(d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Lot Owners or their Mortgagees.

(e) Each policy of insurance obtained by the Association shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the Area in which the Project is located; a waiver (if available) of the insurer's subrogation rights with respect to the Association, the Manager, the Trustees, the Lot Owners, and their respective servants, agents, and guests; that it cannot be cancelled, suspended or invalidated due to the conduct of any member, officer, or employee of the Association or of the Manager without a prior written demand that the defect be cured; that no "no other insurance" clause therein shall not apply with respect to insurance held individually by the Lot Owners; and that a mortgagee clause endorsement which must provide that the insurance carrier shall notify in writing and all insureds, including the services on behalf of Mortgagees thereof at least thirty (30) days in advance of the effective date of any substantial modification or cancellation of the policy.

(f) Any Lot Owner may obtain additional insurance at his own expense so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Association. Any Lot Owner who individually obtained insurance covering any portion of the Project shall supply the Committee with a copy of his policy within thirty (30) days after he acquires such insurance.

(g) Insurance coverage required by this Article X must not be prejudiced by (i) any act or neglect of the Lot Owners when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Project over which the Association has no control.

(h) All policies of property insurance must provide that notwithstanding any provision affording the insurer the right to elect to restore damage in lieu of a cash settlement, that option shall not be exercisable by the insurer without the prior written approval of the Association (or any insurance trustee) or if it is in conflict with the provisions of any insurance trust agreement to which the insurance may be a party, or any requirement of law.

(i) All policies shall include an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement."

(j) There may be named, as insured, on behalf of the Association, the Association's authorized representative, including any Trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such Trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate

losses under any policy provision such property or liability insurance, and to perform such other functions as are necessary to accomplish this purpose. Where permitted by law, each Lot Owner hereby appoints the Association, or any Insurance Trustee, or substitute Insurance Trustee designated by the Association as his Attorney-in-fact, for the purpose of purchasing and maintaining such insurance, including but not limited to: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

(k) The foregoing provisions of Article X shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage. In addition to any minimum insurance coverage required hereunder, the Association may purchase additional insurance in such amounts and in such forms as the Association may deem proper from time to time.

(l) The Association shall have no responsibility regarding insurance on the personal property of Lot Owners.

#### X. DAMAGE OR DESTRUCTION

10.1 In the event of damage of or destruction of part or all of the improvements in the Project, the following procedures shall apply:

(a) Insurance Proceeds Sufficient to Repair or Reconstruct. If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damage or destroyed improvement, such repair or reconstruction shall be carried out.

(b) Damage and Destruction Less Than 75%. If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all Lot Owners shall be assessed for any deficiency on the basis of their Percentage Interest.

(c) Damage or Destruction Exceeds 75%. If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish restoration and if the Lot Owners within 100 days after the destruction or damage by a vote of at least 75% elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under sub-section (b) above.

(d) Substantial Damage or Destruction but Owners Do Not Elect to Repair or Reconstruct. If 75% or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are insufficient to accomplish restoration and the Lot Owners do not, within 100 days after the destruction or damage, and by vote of at least 75%, elect to repair or reconstruct the affected improvements, the Association shall promptly record with the Utah County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of the Act shall apply and shall govern the rights of all parties having an interest in the Project or any of the Lots.

10.2 Determination of Extent of Damage or Destruction. Any reconstruction or repair which is required to be carried out by this Article XI regarding the extent of damage to or destruction of Project improvements shall be made by three (3) MAI appraisers selected by the Association. The decision of any two such appraisers shall be conclusive.

## XI. OBSOLESCENCE

11.1 Adoption of a Plan. The Owners representing an aggregate voting interest of eighty percent (80%) or more of the Project may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction. The plan must have the unanimous approval of all first Mortgagees of record at the time of the adoption of such plan. Written notice of adoption of such a plan shall be given to all Owners. Such plan shall be recorded in the official records of Utah County, State of Utah.

11.2 Payment for Renewal and Reconstruction. The expenses of renewal or reconstruction shall be payable by all of the Owners as assessments against their respective Lots. These assessments shall be levied in advance pursuant to Article IX hereof and shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal and reconstruction.

11.3 Dissents from the Plan. An Owner not a party to such a plan for renewal or reconstruction may give written notice of dissent to the Association within fifteen (15) days after the recordation of such plan. The Association shall then give written advice of such dissents to all the Owners within five (5) days after the expiration of such fifteen (15) day period. Within fifteen (15) days of receipt of such notice from the Association the Owners representing an aggregate voting interest of more than twenty percent (20%) of the Project may cancel the plan by written instrument recorded in the official records of Utah County, State of Utah. If the plan is not cancelled then, the Lots of each dissenter shall be purchased according to the following

procedures. If the Owner and the Association can agree on the fair market value thereof, then such sale and conveyance shall be completed within sixty (60) days thereafter. If the parties are unable to agree, then until such time as they do agree or the value is determined, from the date when either party notifies the other of his or her disagreement, the proceeds of that Owner, which shall be determined by calculating his or her undivided interest in proportion to the respective total undivided interest in the Common Areas, and such apportioned proceeds shall be paid into separate account or accounts, each such account representing one Lot. Each such account shall remain in the name of the Association, and shall be further identified by the Lot designation and the name of the Owner. From each separate account the Association, as attorney in fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to encumbrancers (including the Association) in order of the priority of their liens and the balance remaining to each respective Owner.

11.4 Distribution of Excess. In the event amounts collected pursuant to Section 12.2 are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by the Association by a distribution to each Owner in an amount proportionate to the respective amount collected from each such owner.

## XII. CONDEMNATION

12.1 Consequences of Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed in lieu or in avoidance thereof, the following provisions shall apply.

12.2 Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.

12.3 Complete Taking. In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to the respective Percentage Interest in the Common Areas, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the Association shall soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Section 13.4 of this Declaration.

12.4 Partial Taking. In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: (a) as soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and the amounts so allocated to taking of or injury to the Common Areas shall be apportioned among Owners in proportion to their respective Percentage Interests in the Common Areas, (b) the total amount allocated to severance damages shall be apportioned to those Lots which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Lot and/or improvement Lots an Owner has made within his own Lot shall be apportioned to the particular Lot involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Association of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks made payable jointly to the respective Owners and their respective Mortgagees.

12.5 Reorganization. In the event a partial taking results in the taking of a complete Lot, the Owner thereof automatically shall cease to be a member of the Association. Thereafter, the Association shall reallocate the ownership, voting rights, and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such re-allocation to the Owners of remaining Lots for amendment of this Declaration as provided.

12.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XI, above.

### XIII. USE OF LOTS AND COMMON AREAS

13.1 Lot Use Restrictions. Each of the Lots in the Project is intended to be used for single family residential housing and is restricted to such use.



13.2 Occupancy and Residence. For purposes of this and the preceding Paragraph, anyone who resides at the condominium for more than four (4) consecutive weeks, or for more than eight (8) weeks in any calendar year, shall be deemed a permanent resident.

13.3 No Inconsistent Uses Permitted. Neither the Property nor any part of thereof shall be used in any manner or for any purpose inconsistent with the purpose stated in Section 13.1 above.

13.4 Lease of Lots. No Lot Owner shall be permitted to rent or lease his Lot for transient, corporate-perq, hotel, or time share purposes. No rental pools shall be permitted all leases shall be in writing. A Lot Owner may not lease less than the entire Lot (except a parking space may be leased to another Lot Owner) nor lease the Lot for less than thirty (30) days. All lease agreements shall be required to provide, and to the extent they do not, shall be deemed hereby to contain the following, anything to the contrary notwithstanding: (a) that the terms of the lease shall be subject in all respects to the provisions and requirements of this Declaration and the By-Laws attached hereto; (b) that any failure by the occupant, lessee or tenant to comply with the terms, covenants, or conditions hereof, shall constitute a material default under the rental agreement or lease; and (c) notice that the Owner has granted and conveyed to the Association a special power of attorney to evict those occupants, renters, tenants, or lessees who refuse to abide by the Declaration and By-Laws or Rules and Regulations (Owner hereby appoints the Association as his attorney in-fact to enforce the same. Owner also hereby appoints the Association as his attorney in-fact for the purpose of collecting all unpaid Common Area Assessments directly from the tenant, renter, or lessee, which moneys may be deducted by said-tenant, renter, or lessee from rent due to Owner); and that the Association is third party beneficiary of any lease agreements. Other than the foregoing, while there shall be no other restrictions on the right of any Lot Owner to lease his Lot, the Lot Owner shall notify the Association of the dates of the leases and names of each lessee. The Boards, shall have the authority to impose and collect fines for the violation of this Section.

13.5 Use of Common Areas. There shall be no obstruction of the Common Areas by the Owners and/or their renters, guests, invitees without the prior consent of the Association. The Association may by Rules and Regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for the purpose of protecting the interests of all of the Owners or protecting the Lots or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, construed in, or removed from, the Common Areas except upon the prior written consent of the Association.

13.6 Violation of Insurance. Without the prior written consent of the Association nothing shall be done or kept in any Lot or in or upon the Common Areas, or in any part thereof, which would result in the cancellation or threatened cancellation of any of the insurance on the Project, or any part thereof, or increase or threaten to increase the rate of insurance on the Project, or any part thereof, over what the Association, but for such activity would pay.

13.7 Violation of Statute, Rule, or Ordinance. Nothing shall be done or kept in any Lot or in or upon the Common Areas, or in any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body.

13.8 Damage or Waste. No damage to, or waste of, the Common Areas, or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from such damage or waste caused by him or his invitees; provided, however, that any invitee of the Association shall not be under any circumstances deemed to be an invitee of any other Owner.

13.9 Noxious, Destructive, Offensive Activity, or Nuisance. No noxious, destructive or offensive activity shall be carried on in any Lot or in the Common Areas or any part thereof, nor shall anything be done therein which may become an annoyance or nuisance to any other Owner or to any person at any time lawfully occupying a Lot in the Project. This includes but is not limited to motor vehicles with or without defective mufflers, or with modified exhaust systems, noise from televisions or stereos, late parties, loud or noisy parties, and the use of frisbees, golf balls, or other projectiles on the Common Areas, and anything else that would violate the Community standards of common decency and quiet enjoyment.

13.10 Structural Integrity. Nothing shall be done in any Lot or in the Common Areas, or any part thereof, which will impair the structural integrity of the building or which would structurally change the building except as otherwise provided herein.

13.11 Laundry and Garbage. No clothes, sheets, blankets, laundry of any kind, or other articles shall be hung out or exposed on any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, garbage, debris, and other unsightly materials, equipment, or disabled motor vehicles.

13.12 Toys and Child Care Equipment. There shall be no parking of baby carriages, or play pens, bicycles, wagons, toys, vehicles, benches, chairs, other child care equipment, or personal property on the Common Areas, or any part thereof, except in accordance with the Rules and Regulations of the Association.

**13.13 Garages.** Garages appurtenant to each Lot, and assigned to Lot Owners, shall constitute Limited Common Areas. Use of the garages shall be limited to the Lot Owners to whom they belong; Owners may, however, lease their garages to other Sandy Highlands' Owners or residents.

The Board shall have absolute discretion to, in its best judgment, permit, in whole or in part, the use of "visitor" or "guest" parking spaces by Sandy Highlands Owners or residents.

No parking on the street shall be permitted.

There shall be no outside storage or parking upon the street or upon any Common Area of any commercial vehicle, trailer, tractor, motor home, mobile home, camper, boat, boat trailer, water-craft or other large motor vehicle of any kind.

No motor vehicle may be parked or stored in such a manner as to create a safety hazard or so as to impair pedestrian or vehicular access to or within the Community.

**13.14 Rules and Regulations.** The Board has the power and authority to adopt reasonable Rules and Regulations, including but not limited to the power to levy and collect fines, issue and enforce citations and tow vehicles. No Owner shall violate the Rules and Regulations as adopted from time to time by the Association.

**13.15 Structural Alterations.** Without the prior consent of the Board, no structural alterations of any kind or nature to any Lot, Limited Common Areas, or Common Areas shall be made, and no plumbing, electrical or similar work within the Limited Common Areas or the Common Areas shall be done; nor shall any Lot Owner cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the building and no awnings, canopies, trellises, shutters, cables, radio or television antennas, or satellite discs shall be affixed to or placed upon the Limited Common Areas, Common Areas, or Lots including but not limited to the exterior walls or roof, or any part thereof. The Board shall have the authority to establish standards and mandatory guidelines for the foregoing and for all exterior door colors, window coverings, levelers, shades and blinds as necessary to maintain the aesthetics and uniformity in the Community.

**13.16 Restriction on Signs.** No signs, flags, or advertising devices of any nature shall be erected or maintained on any part of the Project without the prior written approval of the Association, except for as may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association.

**13.17 Animals and Pets.** No dangerous pets shall be permitted in the Project. Dangerous pets are defined as those which, in the sole and absolute discretion of the Board, have the propensity to threaten the health, safety or welfare of the Community, any resident thereof or visitor thereto.

No pets other than small dogs, cats, birds or other domestic animals allowed by the Executive Committee in reasonable numbers shall be kept or allowed in any part of the Project.

No Pet weighing more than twenty (20) pounds will be permitted under any circumstance.

An Owner or occupant may not keep in any Lot more than two (2) pets (e.g. two dogs, two cats, two birds, or any combination) at any time.

In no event shall dogs be permitted in any of the Common Areas or Facilities of the Project unless carried on a leash.

Each pet Owner agrees to and shall indemnify the Committee and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of that Owner or Occupant having an animal or pet in the Project.

The Committee, for reasonable cause shall, however, have the right to revoke any permit or consent previously given to any Lot Owner for keeping or harboring any animal within the limits of the Project.

Each Owner expressly agrees hereby to abide by and be bound by any Rules and Regulations promulgated by the Association for the management and control of animals and pets in the Project.

**13.18 No Overloading.** No Owner shall bring anything into his Lot or permit anything to be done in his Lot that will cause damage to the Building or Common Areas, or any part thereof. No Owner shall overload a floor of his Lot, nor overload the electric wiring in the Building or operate machines, appliances, accessories, or equipment in such a manner as to cause, in the sole judgment of the Association, an unreasonable disturbance to others, or connect any machines, appliances, accessories, or equipment to the heating or plumbing systems without the prior written consent of the Association.

**13.19 Commercial Uses.** No commerce, industry, business, trade, occupation, or profession of any kind shall be conducted, maintained, or permitted on the Property, or any part thereof except as would be permitted by Sandy City Ordinance No. 82-15.

#### XIV. MORTGAGE PROTECTION

14.1 Notice of Delinquent Owner. From and after the time a Mortgagee makes written request to the Association therefor, the Association shall notify such Mortgagee in writing in the event that the Owner of the Lot encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

14.2 Assessment Lien Subordinate. The lien or claim against a Lot for unpaid assessments or charges levied by the Association pursuant to this Declaration or the Act shall be subordinate to the First Mortgage affecting such Lot, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Lot shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to all Lots including the Lot in which the First Mortgagee is interested). No assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot affected or previously affected by the First Mortgage concerned.

14.3 Prohibited or Restricted Actions. Unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each First Mortgage) or Owners (other than Declarant) of the individual Lots have given their prior written approval, the Association shall not be entitled, by act, omission, or otherwise:

(a) To abandon or terminate the Project or to abandon or terminate the arrangement which is established by this Declaration and the Map.

(b) To partition or subdivide any Lot.

(c) To abandon, partition, subdivide, encumber, sell, or transfer all or any part of the Common Areas (except for the granting of easements for utilities and similar purposes) consistent with the intended use of the Common Areas.

(d) To sue hazard insurance proceeds resulting from damage to any part of the Project (whether to Lots or to the Common Areas) for purposes other than the repair, replacement, or reconstruction of such improvements, except as provided in Article XI.

(e) To change the pro rata interests or obligations of any Lot which apply for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, and for (ii) determining the pro rata share of ownership for each Lot in the Common Areas.

The Association shall not: (i) alter the provisions of Article IX in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby; or (ii) fail to maintain the insurance coverage described in said Article.

**14.4 Examination of Books and Records/Reserve Account.** Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association. The Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary repairs, maintenance, and replacements of the Common Areas and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lots rather than by special assessments.

**14.5 Condemnation.** From and after the time a Mortgagee makes written request to the Association therefor, the Committee or the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (i) the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00); or (ii) Any Lot encumbered the Mortgage held by such Mortgagee, if the amount involved in such damage, loss, or taking is in excess of, or reasonably estimated to be in excess of, One Thousand Dollars (\$1,000.00). Said notice shall be given within ten (10) days after the Association learns of such damage, loss, taking, or anticipated condemnation.

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

**14.6 No Right of First Refusal May Apply.** Any Mortgagee which obtains title to the Lot encumbered by its Mortgage pursuant to the remedies provided for in said Mortgage, pursuant to foreclosure of said Mortgage, pursuant to exercise of a power of sale available under said Mortgage, or pursuant to deed or assignment in lieu of foreclosure, shall be exempt from and shall in no way be governed by or subject to any "right of first refusal" which may be contained in or provided for in this Declaration.

**14.7 Conflict.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of Article XV the provision or clause which

results in the greatest protection and security for a First Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

14.8 Amendments/Maximum Protection to Mortgagees. No amendment to this Declaration which has the effect of diminishing the rights, protection or security afforded to the First Mortgagees shall be accomplished or effected unless all of the First Mortgagees of the individual Lots have given their prior written approval to such amendment. Any amendment to this Article XIV shall be accomplished by an instrument executed by the Association and filed for record in the office of the Salt Lake County Recorder. In any such instrument, an officer of the Association shall certify that any prior written approval of First Mortgagees required by this Article XIV as a condition to amendment has been obtained.

14.9 Reviewed Financial Statements/Audits. The Association shall provide a compilation, a review, summary or an audited statement, where appropriate, for the preceding fiscal year if the holder, insurer, or guarantor of any First Mortgage on a Lot submits a written request for it.

#### XV. AMENDMENT

15.1 Procedure. Except as otherwise provided herein, the provisions of this Declaration may be amended, changed, or modified by the vote of at least sixty-seven percent (67%) of the Percentage Interest in the Common Areas. Any amendment so authorized shall be accomplished through the recordation of an instrument in writing executed by the Association. In such instrument, the Board of Trustees shall certify that the vote required by this Article for Amendment has occurred. The Amendment shall be effective upon the recordation in the office of the County Recorder of Salt Lake County, State of Utah.

#### XVI. GENERAL PROVISIONS

16.1 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 other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. Failure to comply with any of the same shall be grounds

for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner. By acquiring any interest in a Lot or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

16.2 Limitation on Association's Liability. The Association shall not be liable for failure of water service or other utility services to be obtained and paid for by the Association hereunder, or for personal injury or property damage caused by the elements, another Owner or person in or upon the Project, or resulting from electricity, or water, rain, snow, or ice which may have originated, leaked, or flowed from outside any Building or from any parts thereof, Building or its drains, pipes, conduits, appliances, or equipment or from any other place, unless caused by the grossly negligent or willful misconduct of the Association.

No diminution or abatement of any assessments under the Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

Each Lot Owner or occupant hereby waives, releases, and forever discharges any and all claims which he may have against the Board of Trustees, the Association, and their respective employees or agents, for damage to the Common Areas and facilities, any Lot, or to any personal property located in the Lot or on the Common Areas caused by fire or other casualty to the extent that such damage is not covered by fire or other form of casualty insurance.

16.3 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may have leased or rented said interest, but the Owner of a Lot shall have no obligation for expenses or other obligations accruing after he conveys the Lot.

16.4 Interpretation. To the extent the provisions of the Act are consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of the 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 the plural shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.



**16.5 Agent for Service of Process.** The President of the Association is the person to receive service of process in the cases authorized by the Act. The Association shall, however, have the right to appoint a successor or substitute process agent. Such successor or substitute agent and his address shall be specified by an appropriate instrument filed in the office of the County Recorder of Salt Lake County, State of Utah.

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

**16.7 Utilities.** All expenses incurred in the operation, maintenance, and improvement of the utilities servicing the Community, including but not limited to gas, water, power, sewer, and waste removal, are hereby declared to be Common Expenses and shall be apportioned among the Lot Owners in accordance with their Percentage Interest. Any expense incurred in the maintenance and repair of any interior utility system shall be the expense of the individual Lot Owner and shall not be included in the common expenses described above.

The Association shall have the power, without risk of liability, to shut off utilities to any Owner or Occupant whose Common Area fees have not been paid, after no less than ten (10) days prior notice has been given to the defaulting party. The Association also has the right and power, at its option, to separately meter any utility service when an Owner or Occupant is in default of a payment of a Common Area assessment, and the cost of the metering shall be charged to the Owner. Further, the Board may shut off any utility service to any Owner or occupant who has not paid his proportionate share of the Common Area utility bills. The cost of any shut off valves, both labor and material, shall be the obligation of the defaulting Owner or occupant. The Association may file a lien for this charge, and foreclose thereon or sue for a personal judgment at its option.

**16.8 Separate Real Estate Taxes.** It is understood that real estate taxes are to be separately taxed to each Lot Owner for his Lot and his corresponding percentage of ownership interest in the Common Areas. However, in the event that for any year such taxes are not separately taxed to each Lot Owner, but are taxed on the Property as a whole, then each Lot Owner shall pay his proportionate share of the whole in accordance with his respective percentage of ownership interest in the Common Areas.

**16.9 Failure to Enforce.** No terms, obligations, covenants, conditions, restrictions, or provisions imposed hereby or contained

herein shall be abrogated or waived by any failure of the Association to enforce the same, no matter how many violations or breaches may occur.

16.10 Notices. Notice required or permitted to be given hereby to the Board of Trustees, the Association, or any Lot Owner may be delivered either personally or by mail, postage pre-paid, addressed to a member of the Board, the Board, the Association, or the Lot Owner. Notice required to be given to any devisee or personal representative of a deceased Lot Owner may be delivered either personally or by mail, postage pre-paid, addressed to such party at his address appearing in the records of the Association, or the Court wherein the estate of such deceased person is being administered.

16.11 Severability. The provisions hereof shall be deemed independent and severable and the invalidity or partial unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions.

16.12 Violation of Declaration. The violation of any covenant, condition, restriction, limitation, rule or regulation adopted by the Association, or the breach of any provision herein contained, shall give the Association the power and right to demand that the owner and/or occupant abate and remove, at his or her expense any structure, article, item, object, thing, activity or condition, that may exist thereon contrary to the intent and meaning of the provisions hereof.

16.13 Attorney Fees. In the event the Board refers the Declaration, By-Laws, or Rules and Regulations to an attorney for enforcement, whether or not a suit is filed, the Association shall be entitled to recover all costs, including reasonable attorney's fees, incurred from the defaulting Owner and/or occupant. All sums assessed to Owner pursuant to this Section shall be secured by an automatic lien against his Lot in favor the Association.

16.14 Consent in Lieu of Vote. In any case in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Lot Owners who collectively hold at least the stated percentage of undivided ownership interest.

16.15 Term of Declaration. This Declaration shall continue for a term of twenty (20) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of greater than fifty percent (50%) of the Owners determines that this Declaration shall terminate.

## XVII. ARCHITECTURAL CONTROL

17.1 No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Trustees of the Association, and/or by an architectural committee composed of three (3) or more representatives appointed by the Board.

In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after copies of the proposed plans and specifications have been submitted to it personally or by certified mail, approval will not be required and this Article will be deemed to have been fully complied with.

## XVIII. PARTY WALLS

18.1 General Rules of Law to Apply. Each Wall which is built as part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

18.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

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

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

18.6 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be a majority of the arbitrators.

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

SANDY HIGHLAND  
HOMEOWNER'S ASSOCIATION

*Stewart Bates*

By: STEWART BATES  
Title: President  
Address: 1087 E 8320 S., Sandy, UT  
84094

*Bessie M. Bradshaw*

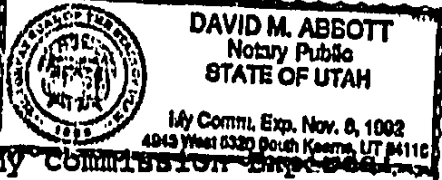
By: BESSIE BRADSHAW  
Title: Secretary  
Address: 8354 S. 1100 E., Sandy, UT  
84094

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On this 7<sup>th</sup> day of ~~February~~ <sup>March</sup>, 1989, personally appeared before me, STEWART BATES and BESSIE BRADSHAW, who duly acknowledged to me that they are the President and Secretary of Sandy Highlands Homeowner's Association and that the foregoing instrument was signed on behalf of said Association by authority of its resolution of its Board of

BOOK 6110 PAGE 2247

Directors, and said STEWART BATES and BESSIE BRADSHAW acknowledged to me that said Association executed the same.



*David M. Abbott*

Notary Public  
Residing at: Salt Lake County

My Commission Expires: November 8, 1992

STATE OF UTAH )  
 ) : ss.  
COUNTY OF SALT LAKE )

**CERTIFICATION**

Comes now BESSIE BRADSHAW, the Secretary of the Association, and under oath, acknowledges and certifies that the foregoing Amended Declaration was approved by sixty-seven (67%) or more of the members of the Association as required by Article VI Section 3 of the original Declaration.

*Bessie M. Bradshaw*  
BESSIE BRADSHAW, Secretary

Subscribed and sworn to before me this 7th day of ~~February~~, 1989.  
March

*David M. Abbott*  
Notary Public  
Residing at: Salt Lake County

My Commission Expires: November 8, 1992

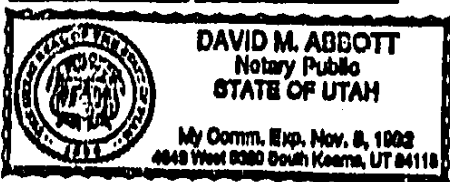


EXHIBIT "A"

The LAND described in the foregoing document is located in SALT LAKE COUNTY, State of UTAH and is described more particularly as follows:

Beginning at a point on the east Right of Way line of 1000 East Street said point more specifically described as being N 0° 10' 00" E 1533.70 feet and east 33.00 feet from the S<sup>4</sup> Corner of Section 32, T.28., R. 1E., S.L.M. & M., and running thence N 0° 10' 00" E 130.30 feet; thence east 297.00 feet; thence N 0° 10' 00" E 331.30 feet; thence N 89° 56' 41" E 467.30 feet; thence S 3° 7' 30" W 659.82 feet; thence S 89° 58' 30" W 335.77 feet; thence N 0° 10' 00" E 198.00 feet; thence S 89° 58' 30" W 429.00 feet to the point of beginning.

EXHIBIT "B"

PERCENTAGE OF OWNERSHIP INTEREST

<u>UNIT NO.</u>	<u>PERCENTAGE OF OWNERSHIP INTEREST</u>
1	.72%
2	.72%
3	.72%
4	.72%
5	.72%
6	.72%
7	.72%
8	.72%
9	.72%
10	.72%
11	.72%
12	.72%
13	.72%
14	.72%
15	.72%
16	.72%
17	.72%
18	.72%
19	.72%
20	.72%
21	.72%
22	.72%
23	.72%

FORM 6110 FEB 2010

UNIT NO.

PERCENTAGE OWNERSHIP INTEREST

24	.72%
25	.72%
26	.72%
27	.72%
28	.72%
29	.72%
30	.72%
31	.72%
32	.72%
33	.72%
34	.72%
35	.72%
36	.72%
37	.72%
38	.72%
39	.72%
40	.72%
41	.72%
42	.72%
43	.72%
44	.72%
45	.72%
46	.72%
47	.72%
48	.72%

NOV 61 10 AM '251



UNIT NO.

PERCENTAGE  
OWNERSHIP INTEREST

49	.72%
50	.72%
51	.72%
52	.72%
53	.72%
54	.72%
55	.72%
56	.72%
57	.72%
58	.72%
59	.72%
60	.72%
61	.72%
62	.72%
63	.72%
64	.72%
65	.72%
66	.72%
67	.72%
68	.72%
69	.72%
70	.72%
71	.72%
72	.72%

TOTAL

100%

BUR 6110 FEB 22 52

**EXHIBIT "C"**

**AMENDED BY-LAWS**

**OF**

**SANDY HIGHLANDS, A PLANNED UNIT DEVELOPMENT**

**ARTICLE I**

**PLAN OF LOT OWNERSHIP AND INCORPORATION**

1. Submission. The Land described with particularity in the Amended Declaration of Covenants, Conditions and Restrictions (hereinafter called the "Declaration"), which is located in Salt Lake County, State of Utah, has been submitted to the restrictive covenants set forth therein. The Declaration has been or will be recorded in the Office of the County Recorder of Salt Lake County, State of Utah, and these Amended By-Laws (hereinafter called the "By-Laws") are annexed thereto.

2. Incorporation. In the event the Sandy Highlands Homeowner's Association elects to or has elected to incorporate under and pursuant to the Laws of the State of Utah, these By-Laws shall also function and operate as the By-Laws of the incorporated Association.

3. Office and Registered Agent. The Registered Agent of the Association is and shall be the President of the Association. The President at this time is Stewart Bates, and the address of the Registered Agent is 8320 So. 1087 E., Sandy, Utah. This is also be the registered address of the incorporated Association and shall remain so unless otherwise designated by the Board of Trustees.

4. By-Laws Applicability. All present and future Owners, tenants, renters, lessees, their guests, licensees, invitees, servants, agents, employees, and any other person or persons who shall be permitted to use the facilities of the Project, shall be subject to these By-Laws. Acquisition, rental, or occupancy of any of the Units in the Project shall constitute an acknowledgment not only that such Owner, tenant, or occupant has accepted these By-Laws, the provisions of the Declaration and the Rules and Regulations promulgated from time to time by the Homeowner's Committee, but also that they will comply with them.

## ARTICLE II

### ASSOCIATION

1. Composition. All of the Lot Owners, acting as a group in accordance with the Declaration and these By-Laws, shall constitute the Association. Except as to those matters which the Declaration specifically requires to be performed by the vote of the Lot Owners, the administration of the Project shall be performed by the Association through the Homeowner's Committee.

2. Voting. The total percentage of the number of votes in the Association shall be 100% and each unit shall be entitled to the number of votes proportionate to the Percentage Interest assigned to such Lot.

Since a Lot Owner may be more than one person, if only one of such persons is present at a meeting of the Association that person shall be entitled to cast the votes appertaining to that Unit. But, if more than one of such persons is present, the vote appertaining to that Unit shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if anyone of them purports to cast the vote appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting.

Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this Section to include, without limitation, any natural person having the authority to execute deeds on behalf of any entity, excluding natural persons, which are, either alone or in conjunction with another person or persons, a Unit Owner. Except where a greater number is required by the Declaration or these By-Laws, where a quorum exists, a majority of the votes of Unit Owners present in person or represented by proxy in good standing and entitled to vote is required to adopt decisions at any meeting of the Association.

3. Place of Meeting. Meetings of the Association shall be held at the principal office of the Project or at such other suitable place as may be designated by the Committee from time to time and stated in the notice of meeting.

4. Annual Meeting. Unless otherwise designated by the Committee, the annual meeting of the Association shall be held at 7:30 p.m. on the second Tuesday in January of each year, or at such other suitable date as may be designated by the Committee from time to time. When such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be at a location in Salt Lake County, State of Utah, specified in

the notice of meeting. The Executive Committee meeting shall be at 6:30 p.m. on the same night.

5. Special Meetings. It shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Committee or, after all of the Committee has been elected by Unit owners other than Declarant, upon a petition signed and presented to the Secretary by Owners having not less than twenty-five percent (25%) of the Percentage Interest of all Owners. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

6. Notice of Meeting. It shall be the duty of the Secretary to mail, by United States mail, postage pre-paid, a notice of (a) each annual meeting of the Owners not less than ten (10) and not more than thirty (30) days in advance of such meeting; and (b) each special meeting of the Owners at least three (3) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of their respective Units and at such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

7. Voting Requirements. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Declaration, these By-Laws, the Rules and Regulations, and shall have fully paid all due installments of assessments made or levied against him and his Unit by the Committee as hereinafter provided, together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his Unit, at least two (2) days prior to the date fixed for such annual or special meeting.

8. Proxies. The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or, in cases where the Unit Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Unit Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy, and must be filed with the Secretary not less than two (2) days before the meeting.

9. Quorum Voting. Except as may otherwise be provided herein or by the Declaration, or by statute, fifteen percent (15%) of the Percentage Interest shall constitute a quorum for the adoption of decisions. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two (2) days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. The Owners present at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Unit Owners representing more than fifteen percent (15%) of the Percentage Interest in person or by proxy, shall decide any question brought before the meeting.

10. Order of Business. The order of business at all meetings of the Association shall be as follows:

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

11. Conduct of Meeting. The President shall, or in his absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as record of all transactions occurring thereat.

### ARTICLE III

BOARD OF TRUSTEES aka BOARD OF DIRECTORS,  
EXECUTIVE COMMITTEE, HOMEOWNER'S COMMITTEE, MANAGEMENT COMMITTEE  
OF COMMITTEE

1. Powers and Duties. The affairs and business of the Association shall be managed by the Board of Trustees, also sometimes known in this and other related documents as the Board of Directors, Board, Homeowner's Committee, Management Committee, or Committee, which shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things as are not by the Act or by these By-Laws directed to be exercised and done by the Association. The Committee shall have the power from time to time to adopt any

Rules and Regulations deemed necessary for the enjoyment of the Project provided such Rules and Regulations shall not be in conflict with the Act, the Declaration, or these By-Laws. The Committee shall delegate to one of its members the authority to act on behalf of the Committee on all matters relating to the duties of the Manager, if any, which might arise between meetings of the Committee. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for the following:

(a) Preparation of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses.

(b) Making assessments against Owners to defray the costs and expenses of the Condominium, establishing the means and methods of collecting such assessments from the Owners, and establishing the period and method of the installment payment of the annual assessment for Common Expenses subject to these guidelines. Unless otherwise determined by the Committee, the annual assessment against each Owner for his proportionate share of the Common Expenses may be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month. However, in the event a Unit Owner fails to make an installment payment in a timely manner, then the entire annual assessment shall automatically be due and payable without further notice.

(c) Providing for the operation, care, upkeep, replacement, maintenance, and surveillance of all the Common Areas and services of the Project.

(d) Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Common Areas, and providing services for the property, and, where appropriate, providing the compensation of such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Owners.

(e) Collecting the assessments against the Owners, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Property.

(f) Making, amending, and enforcing Rules and Regulations respecting the Declaration, these By-Laws, and the use of the Property.

(g) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.

(h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of these By-Laws, after damage or destruction by fire or other casualty.

(i) Enforcing by legal means the provisions of the Declaration, these By-Laws, and Rules and Regulations for the use of the Property adopted by it, and bringing any proceedings which may be instituted on behalf of the Owners.

(j) Obtaining and carrying insurance against the risks, casualties and liabilities, as provided in the Declaration and paying the premium cost thereof.

(k) Paying the cost of all services rendered to the Project and not billed directly to Owners of individual Units.

(l) Keeping books and records with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Project, specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Committee for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon resolution of the Association, shall be audited at least once a year by an outside auditor employed by the Committee who shall not be a resident of the Project, or an Owner therein. The cost of such audit shall be a Common Expense. A copy of the annual audit report shall be supplied to any first mortgagee of any Unit in the Project who requests the same in writing from the Secretary.

(m) Water, waste removal, electricity, telephone, cable t.v., and other necessary utility services for the Common Areas and such services to the Units, including but not limited to heating, as are not separately metered or charged to the Unit Owners thereof.

(n) Landscaping, gardening, snow removal, painting, cleaning, maintenance, decorating, repair and replacement of the Common Areas, but not including the interior surfaces, windows, doors, patios, or balconies, of the Units.

(o) To pay any amount necessary to discharge any mechanic's or materialmen's lien or other encumbrance levied against the Property, or any part thereof, which may in the opinion of the Committee constitute a lien against the Property or against the Common Areas, rather than merely against the particular Unit. When one or more Unit Owners are responsible for the existence of such a lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Committee by reason of said lien or liens shall be specially assessed to said Unit Owners and shall, until paid by said Unit Owners, constitute a lien on the interest of said Unit Owners in the Property which lien may be perfected and foreclosed in the manner provided in the Declaration.

(p) To issue citations for violations of the Declaration, By-Laws, or Rules and Regulations.

(q) After due notice and hearing, to make rulings on alleged violations of the Declaration, By-Laws, or Rules and Regulations.

(r) To levy, collect, and otherwise enforce fines, penalties, or assessments for citations for violations of the Declaration, By-Laws, or Rules and Regulations.

(s) At the expense of the Owner, or Occupant, to tow away or otherwise remove any motor vehicle parked or standing in an unauthorized area.

(t) To evict non-owner Occupants in material violation of the Declaration, By-Laws, or Rules and Regulations.

(u) To do such other things and acts necessary to accomplish the foregoing and not inconsistent with the Act, the Declaration, the By-Laws, or to do anything required by a proper resolution of the Board or Association.

2. Composition of Board. The Board shall be composed of the same five (5) persons, the same referred to in Article VI of the Declaration. Only Unit Owners and officers or agents of Owners other than individuals shall be eligible for Committee Membership.



3. Election and Term of Office of the Committee. The term of office of membership on the Committee shall be one (1) year. At the expiration of the member's term, a successor shall be elected. However, in order to stagger the replacement of members, and give the Board continuity, two members elected in January will serve terms of twelve months commencing the following July and three members elected in January will serve terms of twelve months commencing immediately.

4. Organization Meeting. The first meeting of the members of the Committee shall be immediately following the annual meeting of the Association.

5. Regular Meetings. Regular meetings of the Committee shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Committee.

6. Special Meetings. Special meetings of the Committee may be called by the President, Vice-President or a majority of the members on at least twenty-four (24) hours notice to each member. Such notice shall be given personally, by mail or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Committee shall be valid for any and all purposes.

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

8. Committee's Quorum. At all meetings of the Committee, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Committeemen present at a meeting at which a quorum is present shall be deemed to be the acts of the Committee. If, at any meeting of the Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no longer than two (2) days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

9. Vacancies. Vacancies in the Committee caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Committee at a special meeting of the Committee held for that purpose promptly after the occurrence of any such vacancy,

even though the total members remaining may constitute less than a quorum of the committee; and each person so elected shall be a member for the remainder of the term of the member so replaced and until a successor is elected at the next annual meeting of the Association. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

10. Removal of Committee Member. A member may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of fifty-one percent (51%) of the votes represented and voting. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Committee Member who misses twenty-five percent (25%) or more of the Committee Meetings or who misses three (3) consecutive meetings, in any calendar year, shall be automatically removed from the Committee.

11. Independent Contracts. The Executive Committee members shall not be compensated for their services. Because of a possible "conflict of interest" it is required that a member of the Executive Committee and their family will not receive compensation for efforts on behalf of the Sandy Highlands. This is to include the term of office or one (1) year after his election whichever is longer.

It it is found that compensation has been given to a person not qualified to receive it, the Executive Committee member will be assessed to the amount paid out.

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

13. Report of Committee. The Committee shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Condominium.

14. Insurance. Where reasonably available, the Committee shall purchase and maintain the following insurance, which shall be a Common Expense:

- (a) Hazard insurance
- (b) Public Liability insurance

- (c) Workmens Compenstation insurance
- (d) Fidelity insurance or bond
- (e) Mud, mudslide, and soil erosion insurance
- (f) Errors and Omission insurance

#### ARTICLE IV

##### OFFICERS

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

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

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

4. President or Chairman. The President shall be the chief executive officer; he shall preside at meetings of the Association and the Committee and shall be an ex officio member of all committees; he shall have general and active management of the business of the Committee and shall see that all orders and resolutions of the Committee are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.

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

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

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

8. Professional Management/Agreement, Contracts, Deeds, Checks, etc. If the Community is self-managed, all agreements, contracts, deeds, leases, checks, and other instruments of the Project expenditures or obligations shall be executed by any two officers of the Committee or by such other person or persons as may be designated by the Committee, provided, however, one of the signatures shall always be that of the President or Secretary. This procedure shall not be required if the Community is managed by a properly bonded and insured Professional Management Company. The Association may but need not be professionally managed.

#### ARTICLE V

#### FISCAL YEAR

The fiscal year of the Association shall be the calendar year consisting of the twelve month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal

year herein established shall be subject to change by the Committee should it be deemed advisable or in the best interests of the Association.

## ARTICLE VI

### AMENDMENT TO BY-LAWS

1. Amendments. Except as otherwise provided in this Section or the Declaration or Articles, these By-Laws may be modified or amended either (i) by a vote of Owners representing at least fifty-one percent (51%) of the Percentage Interest at any regular or special meeting at which a quorum is present, provided that Notice of the proposed amendment shall have been given to each Owner simultaneously with the notice of the meeting, or (ii) pursuant to a written instrument duly executed by Owners representing at least fifty-one percent (51%) of the Percentage Interest.

2. Recording. A modification or amendment of these By-Laws shall become effective only if such modification or amendment is recorded in the Office of the County Recorder of Utah County, State of Utah.

3. Conflicts. No modification or amendment of these By-Laws may be adopted which shall be inconsistent with the provisions of the Act or Declaration. A modification or amendment once adopted and recorded as provided for herein shall then constitute part of the official By-Laws of the Project and all Owners shall be bound by and shall be obligated to abide by such modification or amendment.

## ARTICLE VII

### NOTICE

1. Manner of Notice. All notices, demands, bills, statements, or other communications provided for or required under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by U.S. Mail, first class postage pre-paid, (i) if to an Owner, at the address of his Unit and at such other address as the Owner may have designated by notice in writing to the Secretary; or (ii) if to the Committee or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before

or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

#### ARTICLE VIII

##### COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Compliance. These By-Laws are set forth in compliance with the requirements of the Act.

2. Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration and to the provisions of the Act. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration or the Act. In the event of any conflict between these By-Laws and the Declaration, the provisions of the Declaration shall control; and in the event of any conflict between the Declaration and the Act, the provisions of the Act shall control. In the event of any conflict between the provision of these By-Laws and any corporate By-Laws these By-Laws shall govern and control.

3. Severability. If any provisions of these By-Laws or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of these By-Laws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

4. Waiver. No restriction, condition, obligation, or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

5. Captions. The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

6. Gender, etc. Whenever in these By-Laws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine.

7. Committee Liability and Indemnity. The members of the Committee and the officers thereof shall not be liable to any Unit Owner, occupant or visitor for any damages, loss or liability arising out of or caused by any mistake of judgment, or for any

acts or omissions made in good faith. To the extent any loss is not covered by insurance, Unit Owners, occupants and visitors hereby agree to and shall indemnify and hold harmless the Association, the Committee, their members or officers against all tort liability and all contractual liability arising out of contracts entered into on behalf of the Association, unless such contracts shall have been made in bad faith or contrary to the provisions of the Declaration, or for any damages for any injury which may occur during the course of work for the Association. Each agreement or contract made by the Association shall be executed by a committee member or officer, as an agent for the Association.

8. Damage not Covered by Insurance. Each Unit Owner hereby waives and releases any and all claims, demands, and choses in action he may have against the Association or any officer or member of the Committee, and their respective employees, agents, and representatives for damage or losses to his property or person to the extent the damage or loss is not covered by insurance.

9. Negligence. If due to an act or omission of a Unit Owner, or a member of his family, or a guest, or other authorized occupant, visitor, or invitee, damage is caused to person or property, including but not limited to the Common Areas, or to a Unit owned by another, the loss or damage including but not limited to the cost of repair, replacement, or restoration required, which would otherwise be at the common expense of the Association, shall be paid for by said Owner to the extent it is not covered by insurance. Payment shall be in the manner determined by the Committee.

10. Prior Documents Superseded. These Amended By-Laws supersede and replace in their entirety all other By-Laws governing Sandy Highlands or Sandy Highlands Homeowners Association, Inc.

11. Attorney's Fees and Costs. If an Owner, occupant or guest shall, at any time, be in default under the provisions of these By-Laws, or the Declaration, or Act, and the Committee shall be required to take action to enforce the same, the Owner shall reimburse the Committee for all costs and expenses, including but not limited to a reasonable attorney's fee necessitated thereby. The Committee shall have the right and power to file a lien therefore and to collect the same as if it were an unpaid assessment. In the event of a breach or anticipated breach by an Owner of any of the terms, covenants, or conditions of these By-Laws or Declaration, the Committee shall have the right to injunctive relief, damages, and to invoke any remedy permitted by law or equity.

12. Persons Bound. All references herein to an Owner, Occupant, Tenant, Renter, Lessee, Guest, or Invitee shall be deemed to include their respective executors, administrators, representatives, legatees, distributees, and assigns; and the terms, covenants, and conditions herein contained shall apply to and bind them.

13. Conclusive Decisions of Committee. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any question or interpretation or application of the provisions of the Declaration, these By-Laws, or the Rules and Regulations, the determination thereof by the Committee shall be complete, final and binding upon each said Unit Owner.

Adopted and executed by the Association as of the same date the Declaration was executed.

SANDY HIGHLANDS HOMEOWNER'S ASSOCIATION

*Stewart Bates*

By: STEWART BATES  
Title: President

*Bessie M. Bradshaw*

By: BESSIE BRADSHAW  
Title: Secretary

STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

On this 7<sup>th</sup> day of <sup>March</sup> ~~February~~, 1989, personally appeared before me, STEWART BATES and BESSIE BRADSHAW, who duly acknowledged to me that they are the President and Secretary of Sandy Highland Homeowner's Association and that the foregoing instrument was signed on behalf of said Association by authority of its resolution of its Board of Directors, and said STEWART BATES and BESSIE BRADSHAW acknowledged to me that said Association executed the same.

*David M. Abbott*

Notary Public  
Residing at: Salt Lake County

My Commission Expires: November 8, 1992

