

**DECLARATION OF EASEMENTS AND
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HEARTHSTONE SUBDIVISION**

DECLARATION OF EASEMENTS AND PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE HEARTHSTONE SUBDIVISION (this "Declaration") is made this 23RD day of MARCH, 2005 by **MCMULLIN HOMES, INC.**, whose address is 1098 East South Union Ave., Midvale, UT 84047 (the "Declarant"), under the following circumstances:

WITNESSETH:

A. Declarant is the fee owner of certain real estate in Salt Lake County, Utah, which has been subdivided into Lots, as more particularly described on Exhibit A attached hereto and made a part hereof, and also shown on the Record Plat for the Hearthstone Subdivision ("Record Plat"), recorded in Plat Book 2005P Page 72 of the Plat Records of Salt Lake County, Utah (the "Property" or "Subdivision"); and

B. Declarant desires to provide for the preservation of the values and amenities in the Subdivision and for the maintenance of certain Common Elements (as hereinafter defined); and to this end desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said Property and the subsequent Owners thereof; and

C. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said Subdivision, to create an association to which should be delegated and assigned the powers and duties of maintaining and administering the Common Elements and Administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

D. Declarant has formed or will form the Hearthstone Homeowners' Association, Inc. as a Utah non-profit Utah corporation (the "Association"), which shall be responsible for the maintenance, management and control of the Common Elements on the Property.

NOW, THEREFORE, the Declarant hereby declares that all of the Property described in Exhibit A shall be held, sold and conveyed, subject to the following covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of said Lots. All of these restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any of the Property.

ARTICLE 1.
DEFINITIONS

1.2 “Annual Organizational Board Meeting” shall mean the annual organizational board meeting of the Board which shall take place immediately after each Annual Meeting of the Members.

1.3 “Annual Meeting” shall mean the annual meeting of the Members held in the State of Utah, within the last quarter of each calendar year, upon proper notice, at a date, time and at a place from time to time designated by the Board. The first Annual Meeting of the Members shall be held within one (1) year from the date of incorporation on such date as the initial Board shall determine.

1.4 “Articles and Articles of Incorporation” shall mean those articles, filed with the Secretary of State of Utah, incorporating the Hearthstone Homeowners’ Association, Inc., as a nonprofit corporation under the provisions of the Utah Revised Code, as the same may be amended from time to time.

1.5 “Assessments” shall mean Common Assessment, Special Assessment, Working Capital Assessment and Individual Assessment.

1.6 “Association” shall mean and refer to HEARTHSTONE HOMEOWNERS’ ASSOCIATION, INC., to be formed as a not-for-profit corporation, its successors and assigns.

1.7 “Board” or “Trustee(s)” shall mean the Board of Trustees of the Association established pursuant to its Articles of Incorporation, Code of Regulations and this Declaration.

1.8 “Builder” shall mean McMullin Homes, Inc., a Utah, Corporation, its successors and assigns as a Builder, or other companies engaged in the construction of Dwelling Units or other improvements on the Property and designated as a Builder by Declarant.

1.9 “Class A Members” or “Class A Membership” shall mean as defined in Section 4.4.1 below.

1.10 “Class B Member” or “Class B Membership” shall mean as defined in Section 4.4.2 below.

1.11 “Code of Bylaws and Regulations” shall mean the Code of Bylaws and Regulations of the Association, a copy of which is attached hereto as Exhibit B and made a part hereof, as the same may be amended from time to time.

1.12 “Common Elements” shall mean all the real estate, or any interest therein, including but not limited to, the Private Utility Easements and such other easements for retention and detention ponds, walkways, greenbelt or landscape easements, common area utility easements, storm sewer and surface water drainage easements, water main easements, sanitary sewer easements, private drainage easements, preservation areas, entryways, arterial streets and the undedicated portions of any roadway or street, all as are or may be located, described and shown on the Record Plat or indicated as “Open Space” on the Record Plat.

1.13 “Common Expenses” shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, and as more particularly defined in Section 5.2 of this Declaration.

1.14 “Common Expense Liability” shall mean the liability for Common Expenses allocated to each Lot or Dwelling Unit pursuant to Section 5.9. of this Declaration.

1.15 “Common Private Driveway” shall mean and refer to any private road or driveway which is built or installed as part of the original construction or improvement of the Property by the Declarant to serve more than one (1) Lot; and which is situated on several different Lots, as designated and shown on the Record Plat and/or other recorded instrument as a “Shared Driveway Easement”.

1.16 “Common Private Driveway Easement” shall mean and refer to all common private driveway easement(s) located on the Property as shown on any Record Plat. The areas within the easement(s) are sometimes referred to as the Common Private Driveway(s) or Shared Driveway Easements.

1.17 “Constituent Documents” shall mean the Declaration, the Code of Regulations, the Articles of Incorporation, the Rules and Regulations, if any, and any other basic documents used to create and govern the Subdivision.

1.18 “Declarant” shall mean and refer to McMullin Homes, Inc., its successors and assigns as a Declarant.

1.19 “Default” shall mean any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

1.20 “Development Period” shall mean the period commencing on the date on which this Declaration is recorded in Salt Lake County, Utah Recorder’s Office and terminating on the earlier to occur of (i) when Declarant, in its sole discretion, so determines; (ii) within one hundred twenty (120) days following the date when seventy-five percent (75%) of the Lots have been sold by Declarant to third parties; or (iii) thirty (30) years from the date of recording of the Declaration.

1.21 “Dwelling Unit” shall mean any building or portion of a building situated upon the Property designed and intended for use and occupancy of a residence by a single person, a family or family-sized group of persons.

1.22 “Eligible Mortgagee” shall mean as defined in Section 15.1 below.

1.23 “Individual Assessment” shall mean the charge established by Section 5.3 of this Declaration.

1.24 “Lot” shall mean and refer to each of the parcels of land shown as such upon the Record Plat for the Property upon which there is intended to be a single-family Dwelling Unit or a paired home. Each “side” of the paired home shall be considered an individual Lot.

1.25 “Member(s)” shall mean Class A Members and the Class B Member.

1.26 “Open Space Lot” shall mean the areas depicted on the Recorded Plat as “Open Space” which areas shall be owned by the Association.

1.27 “Owner” shall mean, with respect to any Lot, the owner of record from time to time, whether one or more persons or entities, of an interest in fee simple, reversion, remainder or leasehold estate of 99 years or more, but shall not include the Association. Such term shall include contract sellers except those having an interest merely as security for the performance of an obligation.

1.28 “Private Utility Easements” shall mean and refer to any easements shown on the Record Plat to provide the placement of underground utilities of water, electric, gas, telephone, cable and any other valid or permissible underground utility. These areas are for the benefit of all Lot Owners and any municipal agency having jurisdiction over the respective utilities being installed.

1.29 “Property” or “Subdivision” shall mean and refer to that certain real estate described in Exhibit A hereto.

1.30 “Record Plat” shall mean the plat of Hearthstone Subdivision, as recorded in Plat Book 2005P, Pages 72 of the Salt Lake County, Utah Recorder’s Plat records, including any subsequent plats or replats.

1.31 “Regular Assessment” shall mean the charge established by Section 5.2 of this Declaration.

1.32 “Restrictions” shall mean all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation, all notices, rules and regulations issued in accordance with this Declaration.

1.33 “Rules and Regulations” shall mean all rules and regulations adopted by the Board in accordance with the terms of this Declaration and the Code of Regulations.

1.34 “Special Assessment” shall mean the charge established by Section 5.4 of this Declaration.

1.35 “Supplemental Declaration” shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects all or any portion of the Property to additional covenants, conditions, restrictions or obligations.

1.36 “Working Capital Assessment” shall mean the charge established by Section 5.5 of this Declaration.

When applicable for the sense of this instrument, the singular should be read as including the plural and the male, female, and neuter pronouns and adjectives should be read as interchangeable.

ARTICLE 2
PROPERTY SUBJECT TO THIS DECLARATION

The Property, each portion thereof, and all Dwelling Units thereon shall be held, transferred, sold, conveyed, leased, mortgage and occupied subject to the terms, provisions, covenants and conditions of this Declaration.

ARTICLE 3.
PROPERTY RIGHTS IN COMMON ELEMENTS

3.1 Rights of Enjoyment in the Common Elements. Except as otherwise provided herein, each Owner shall have a right and nonexclusive easement for use and enjoyment of the Common Elements, and such right and easement shall be appurtenant to, and shall pass with the title to his/her Lot. Such rights and privileges shall be subject, however, to the following:

(a) The right of the Board to suspend the right of any Owner to use such of the Common Elements that are recreational in nature, if any, as determined by the Board for any infraction of the Rules and Regulations relating to the Common Elements for a period not to exceed sixty (60) days for each such infraction, or for any non-payment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such non-payment or delinquency;

(b) The right of the Board, with the approval by sixty-seven percent (67%) of the Class A Members and, during the Development Period the Class B Member, to borrow money for the purpose of constructing, equipping, improving and maintaining the Common Elements;

(c) The right of the Board to adopt and enforce and from time to time amend reasonable limitations upon use and Rules and Regulations pertaining to the use of the Common Elements, including regulations limiting guests of Owners who may use the Common Elements at any one time;

(d) All applicable provisions of valid agreements of the Association relating to the Common Elements;

(e) All easements, restrictions and rights to which the Property is subject;

(f) The right of the Association to grant permits, licenses and easements over Common Elements for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; and

(g) Such rights as the Board may have to grant easements or rights-of-way to any public utility corporation or public agency.

3.2 Use of Common Elements by Declarant. Declarant and its affiliates and associates shall have the same rights of use and enjoyment of the Common Elements as the Class A Members during the Development Period, and shall have the same right to use Common Elements for promotional, sales and similar purposes until all of the Lots have been sold.

ARTICLE 4.
HOMEOWNERS' ASSOCIATION

4.1 Homeowners' Association. The Declarant has caused or will cause to be chartered a nonprofit corporation named Hearthstone Homeowners' Association, Inc. The purpose of the Association is to provide for the administrative, governance, maintenance, management and upkeep of the Common Elements and certain portions of each Lot as more specifically set forth in this Declaration.

4.2 Board of Trustees. Until the Development Period Special Meeting (as hereinafter defined), the Board shall consist of three (3) Trustees appointed by Declarant, who shall serve until their respective successors are appointed and qualified. A Trustee elected by Declarant need not be a Member of the Association. A Trustee elected by the Class A Members, on or after the Development Period Special Meeting, must be an Owner of a Lot or Dwelling Unit or a spouse of an Owner of a Lot or Dwelling Unit.

Not more than thirty (30) days after the earlier of the following events occurs, the President of the Association shall call a special membership meeting ("Development Period Special Meeting"):

- (a) the expiration of the Development Period; or
- (b) Declarant gives up, in writing, the right to appoint Trustees.

At the Development Period Special Meeting, the Trustees appointed by Declarant shall be deemed removed from office, and the Class A Members, including Declarant if it is then an Owner, shall elect a new Board consisting of five (5) Trustees who all shall be Lot Owners or who shall otherwise be qualified pursuant to the first paragraph of this Section 4.2 above to be a Trustee. The persons so elected shall take office immediately upon election.

Notwithstanding anything above to the contrary, Declarant may, by written notice to the Board, at or before any Annual Meeting, relinquish to the Lot Owners, Declarant's right to elect one or more Trustees at such Annual Meeting pursuant to this Section.

4.3 Membership of Association. The Declarant and every Owner of a Lot which is subject to Assessment, shall be a Member of the Association. Each Member shall abide by the Association's Rules and Regulations, shall pay when due the Assessments provided for in this Declaration (except as otherwise provided in ARTICLE 5 below), and shall comply with decisions of the Association's governing body. Conveyance of a Lot (except conveyance to a mortgagee) automatically transfers membership in the Association without necessity of further documents. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

4.4 Classes of Membership. The Association shall have two (2) classes of Membership:

4.4.1 Class A Members. Every person, group of persons, or entity which is a record Owner of a fee interest in any Lot upon which a Dwelling Unit has been erected within the Property, shall automatically be a Class A Member of the Association except the Declarant during the Development Period; provided, however, that any such person, group of persons or entity who holds

such interest solely as security for the performance of an obligation shall not be a Member. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot upon which a Dwelling Unit has been constructed which is subject to Assessment. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot portion shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

4.4.2 Class B Members. The Class B Member during the Development Period shall be the Declarant, and such Member shall have seven (7) votes for each Lot in which the Declarant holds the interest otherwise required for Class A Membership multiplied by the number of Dwelling Units located or proposed by the Declarant to be located on such Lot. The Class B Membership shall cease to exist upon the expiration of the Development Period and shall be converted to a Class A Membership with one vote for each Lot owned by Declarant.

4.5 Members Rights and Duties. Each Member shall have the rights, duties and obligations set forth in the Code of Regulations and this Declaration and all amendments duly made hereto in accordance with the terms herein.

ARTICLE 5.

COVENANT FOR ASSESSMENTS

5.1 Purpose of the Assessments. The Assessments are established for the benefit and use of the Association and shall be used in covering the costs of its Common Expenses and for such other purposes as hereinafter set forth.

5.2 Regular Assessment. There are hereby established for the benefit of the Association, its successors and assigns, and all Owners on the Property, as a charge on each Lot, a regular assessment ("Regular Assessment"), which shall be used in covering all of the cost of the Association's operation, insurance, maintenance and repair obligations including, without limitation thereto, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Elements and the costs of any additions and alterations thereto; all labor, services, common utilities, materials, supplies, and equipment therefore; all liability for loss or damage arising out of or in connection with the Common Elements and their use; all premiums for hazard, liability and other insurance with respect to the Common Elements and Trustees; the cost of reasonable reserves for contingencies, replacements and working capital for the Common Elements; management fees; organizational costs; legal costs for the enforcement of liens and covenants in this Declaration and all other costs incurred by Declarant or the Board in the exercise of its powers and duties pursuant to this Declaration; and Lot maintenance as described in Article 7 herein (collectively "Common Expenses"). The Regular Assessment shall be estimated initially in accordance with Section 5.6 of this Declaration. The obligation to pay the Regular Assessment shall not in any manner be dependent on or discharged, or otherwise affected by the use or non-use of the Common Elements or the actual occupancy of any Lot or Dwelling Unit of the Property. Each Owner, by acceptance of a deed, covenants and agrees to pay such Regular Assessment, except the Declarant and any Builder shall have no obligation to pay the Regular Assessment unless the Dwelling Unit is occupied.

5.3 Individual Assessment. The Association, after approval by a majority of the members of the Board, shall have the right to assess an individual Lot or Dwelling Unit for any of the following ("Individual Assessment"):

5.3.1 any costs incurred for maintenance and/or repair of items covered in Paragraph 5.2 above, and caused through the willful or negligent act of an Owner or their family, guests or invitees, including attorney fees, court costs and other expenses incurred; and/or

5.3.2 any costs associated with the enforcement of this Declaration or the Rules and Regulations, if any, of the Association, including, but not limited to attorneys fees, witness fees and costs, and court costs.

5.4 Special Assessments. In addition to the other Assessments authorized herein, and to the extent that the reserve fund is insufficient, the Association may levy an Assessments for the following reasons ("Special Assessment"):

5.4.1 The amount of any operating deficit incurred in any calendar year may be paid by means of a Special Assessment sufficient in an amount so as to allow the Association to satisfy such deficit in part or in whole, provided that any such Special Assessment shall have been approved in accordance with Section 5.4.3 below.

5.4.2 To the extent that the capital budget is insufficient, the Association may levy Special Assessments to construct, structurally alter, or replace capital improvements which are a part of the Common Elements in any fiscal year.

5.4.3 So long as the total amount of Special Assessments allocable to each Lot or Dwelling Unit does not exceed Fifty Percent (50%) of the Regular Assessment for that fiscal year, the Board may impose the Special Assessment. Any Special Assessments which would cause the amount of Special Assessments allocable to any Lot or Dwelling Unit to exceed this limitation shall be effective only if approved by a majority vote of the Members present and voting at a meeting duly called for such purpose. Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

5.5 Working Capital Assessment. Upon the transfer of record of any Lot (other than to Builder, a successor declarant or a designated declarant), the purchaser shall be required to pay, at the time of closing, a sum equal to two (2) full months of the Regular Assessment due on his or her Lot as his or her initial contribution to the working capital of the Association ("Working Capital Assessment"). This Working Capital Assessment is not an advance payment of the monthly Regular Assessment or any other Assessment established herein; such Working Capital Assessment is allocated to a working capital fund to meet unforeseen expenditures and operating expenses or to purchase any additional equipment or services. While the Declarant is in control of the Association, it cannot use any of the working capital funds to defray its expenses, reserve contributions, or construction costs. When control of the Association is transferred to the Lot Owners, the working capital fund shall be transferred to the Association for deposit to a segregated fund. After control of the Association is transferred to the Lot Owners, the Declarant shall be responsible to collect all funds within the working capital account and forward such funds to the Association. Declarant and any Builder shall be exempt from the payment of the Working Capital Assessment.

5.6 Computation and Payment of Regular Assessment. The initial Regular Assessment shall be One Hundred and Ten Dollars (\$110.00) per month per Lot. Thereafter, on an annual basis as described below, the Regular Assessment shall be computed by the Board and levied proportionately to each Lot Owner. The Regular Assessment chargeable to each Lot Owner shall be the proportion of one to the total number of Lots then subject to this Declaration (excepting those Lots owned by Declarant and/or any Builder) and each Lot Owner shall be charged with the payment of that portion of the total Regular Assessment except as provided in the following sentence. The Lots shall be assessed on an equal basis regardless of any variations in the sizes or values of the Lots, except that for the period of time during which Declarant and/or any Builder owns a Lot, Declarant and any Builder shall have no obligation to pay the Regular Assessment until the earlier of (a) the Dwelling Unit is occupied, or (B) Declarant and/or Builder convey the respective Lot or Dwelling Unit to a third party purchaser. By November 1st of each succeeding year, the Board shall estimate the cost for the next year of all of the Common Expenses. By December 1st of each year the Board shall give the Owners notice of the annual estimated budget and of that Unit's Regular Assessment, which is to be itemized to show the amount allocated to the reserve fund as well as the amount allocated for all other purposes. The Regular Assessment shall be effective as to each Lot or Dwelling Unit on the first day of the recording of the Declaration, prorated to the end of the Association's fiscal year. So long as there has been no Default in payment of the Regular Assessment, it shall be payable in quarterly installments due on the last business day of the month in advance of the upcoming quarter. At the closing on the purchase of a Lot from Developer or Builder, the third party purchaser shall pay a pro-rata share of the Regular Assessment due on the Lot for such quarter. The Board shall have the power from time to time to adopt such billing, collection and payment procedures, charges and other payment time schedules as it deems appropriate.

5.7 Increase in Regular Assessments. Any increase in the Regular Assessment shall be assessed proportionately to each Lot Owner. The Association must obtain the prior consent of Lot Owners holding not less than sixty-seven percent (67%) of the total voting power in the Association for any increase in the Regular Assessment that is raised by more than twenty-five percent (25%) of the previous assessed amount.

5.8 Lien for Assessments. The Association shall have a lien for any Assessment levied against a Lot or Dwelling Unit, for fines imposed against an Owner, and for interest, costs and reasonable attorney fees.

5.8.1 Creation. The lien for Assessments is created by this Declaration and shall be a charge and a continuing lien on each Lot, which shall run with the land. All persons or entities acquiring an interest in a Lot after the recording of this Declaration shall take such interest subject to the lien.

5.8.2 Effective Dates. The lien for the Common Expense Liability for each Lot as set forth in the Regular Assessment shall be effective on the first day of the recording of the Declaration. The lien for other Assessments shall be effective on the first day notice is sent of its levy on the Owners affected.

5.8.3 Perfection. Recording of this Declaration constitutes notice and perfection of the lien.

5.8.4 Notice of Lien. The Association may file a notice of lien with the Recorder of Salt Lake County, Utah. Such notice shall not be required for the Association to enforce its lien.

5.8.5 Priority of the Lien. The lien created by this Section shall be prior to all liens and encumbrances recorded subsequent to this Declaration, except the lien for real estate taxes and assessments and the lien of any first mortgage filed of record.

5.8.6 Subordination and Mortgagee Protection. Notwithstanding any of the provisions hereof to the contrary, the lien of any Assessment levied pursuant to this Declaration (and any late charges, interest, costs and attorney fees) shall be subordinate to, and shall in no way affect the rights of the holder of a first mortgage made in good faith for value received; provided, however, that such subordination shall apply only to Assessments, or installments thereof, which have become due and payable prior to the date of Sheriff's sale of such Lot pursuant to a foreclosure or the date of a deed in lieu of foreclosure. Such sale or transfer shall not relieve the mortgagee or the purchaser of a Lot at such sale from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment. Mortgagees shall have no obligation to collect any Assessments due under this Declaration.

5.8.7 Extinguishment of the Lien. A lien for unpaid Assessments is extinguished unless proceedings to enforce it are instituted within five (5) years after the full amount of the Assessment becomes due. If an Owner of a Lot subject to a lien files a petition for relief under the United State Bankruptcy Code, then the period of time to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay under Section 362 of the Bankruptcy Code is lifted.

5.8.8 Estoppel Certificate. Upon request of any mortgagee or Owner and upon payment in full of all Assessments and other charges permitted by this Declaration that are due to the Association, the Association shall execute and deliver to such mortgagee or Owner an estoppel certificate. Such certificate shall be in recordable form and shall note the payment of the outstanding Assessments and charges and that the Association is estopped from the enforcement of its lien with respect to Assessment and charges becoming due and payable prior to the date of the certificate. The Association may charge a reasonable fee for the preparation of such certificate.

5.9 Allocation of Assessments. The Common Expense Liability of each Lot shall be a portion of the Common Expense. The Common Expense Liability and the Regular Assessment chargeable to each Owner of a Lot shall be the proportion of one to the total number of Lots then subject to this Declaration and each Owner shall be charged with the payment of that portion of the total Regular Assessment. Notwithstanding the foregoing, Declarant and any Builder shall have no obligations to pay any Assessment unless the Dwelling Unit is occupied.

5.10 Common Surplus. If the Regular Assessment collected in any given year is in excess of the actual Common Expenses for that year, the Board may, at its sole discretion (a) return each Owner's share of the Common Surplus; (b) credit each Owner's share of the Common Surplus to each Owner's payment as for the Regular Assessment for the following year; or (c) apply the Common Surplus to the reserve.

5.11 Payment. Unless otherwise established by the Board, the Regular Assessment shall be paid in advance in quarterly installments not more than ten (10) days after the due date established by the Board. The Board shall have the power at any time to adopt such billing,

collection and payment procedures and payment time schedules as it shall deem appropriate. Additionally, any Special Assessment or Individual Assessment imposed by the Board shall become due upon the date designated in the notice, but not less than thirty (30) days after the mailing of the notice to the Owner by United States mail.

5.12 Delinquency and Acceleration. Any installment of an Assessment provided for by this Declaration shall become delinquent if not paid on the due date as established by this Declaration or by the Board. With respect to each installment of an Assessment not paid within ten (10) days of its due date, the Board may, at its election, require the Owner to pay a reasonable late charge, costs of collection, reasonable attorney fees and interest at twelve percent (12%) per annum. Interest shall be calculated from the date of delinquency to the date full payment is received by the Association. If any installment of an Assessment is not paid within thirty (30) days of its due date, the Board may, at its election, declare all of the unpaid balance of the Assessment for the then current fiscal year, attributable to that Lot to be immediately due and payable without further demand. The Association may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law, this Declaration or the Code of Regulations. The filing of any petition for relief pursuant to the United States Bankruptcy Code by an Owner whose Assessment has been accelerated shall operate as a restoration of the Assessment to its prior status as if it has been accelerated. Any Eligible Mortgagee (as hereinafter defined) of a Dwelling Unit has the right to request that the Association provide timely written notice to it in the event an Assessment for said Dwelling Unit is not paid by the Dwelling Unit Owner within sixty (60) days of its due date. Failure to pay any Assessment due hereunder shall not constitute a default under any insured mortgage.

5.13 Remedies Cumulative. A suit to recover money judgment for unpaid Assessments and charges may be maintained without foreclosing or waiving the right to enforce the lien. A foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

5.14 Personal Obligation. The Assessments, including fines, if any, payable by each Owner, together with any penalty, interest, costs and reasonable attorney fees shall be the personal obligation of the Owner of the Lot or Dwelling Unit at the time incurred. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any Lot or Dwelling Unit (i.e. husband and wife), then each person shall be jointly and severally liable with respect to payment of any such Assessments. The personal obligation shall not pass to any successors in title unless expressly assumed by them. Further, a mortgagee shall have no obligation to collect any Assessments due hereunder.

5.15 Statement of Unpaid Assessments. The Association shall upon written request of the Owner, contract purchaser, or first mortgagee, furnish a statement setting forth the amount of unpaid Assessments against the Lot or Dwelling Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board and every Owner. The Association may charge a reasonable amount for this statement.

5.16 No Waiver of Liability for Common Expenses. No Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot or Dwelling Unit against which the Assessments are made.

5.17 Books and Records of the Association.

5.17.1 Inspection by Members. The membership book, account books and minutes of the Association, the Board and any committee shall be made available for inspection and copying by any Member or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within Salt Lake City, Utah, as the Board shall prescribe.

5.17.2 Rules for Inspection.

- (a) notice to be given to the custodian of the records by the Members desiring to make the inspection;
- (b) hours and days of the week when such inspection may be made; and
- (c) payment of the cost of reproducing copies requested by a Member.

5.17.3 Inspection by Trustees. Every Trustee shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Trustee includes the right to make extracts and copies of documents at the expense of the Association.

ARTICLE 6.
ARBITRATION

6.1 Arbitration. Any contracts which the Association enters into shall provide for arbitration as a means of dispute resolution. In the event of a dispute between the Association and the Declarant which cannot be resolved by the parties, then upon ten (10) business days advance written notice from the Association to the Declarant or from the Declarant to the Association, as the case may be, setting forth the issue in dispute, the dispute shall be submitted to binding arbitration, which shall be arbitrated by a member of the American Arbitration Association. All costs of such arbitration shall be shared equally by the parties, excluding attorney's fees, which shall be the sole responsibility of the party incurring such fees.

ARTICLE 7.
MAINTENANCE OBLIGATIONS

7.1 Maintenance Obligations of the Association. Declarant or Builder shall install landscaping in the following areas: 1) the front, side and rear yards of each Dwelling Unit (as applicable), 2) landscaping within the parkstrip between the curb & gutter and the sidewalk, and 3) certain landscaping, as agreed upon with Sandy City, in the Common Elements.

The Association, at its expense, shall maintain, replace, operate and keep in good repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the Common Elements; all Open Spaces; retention/detention basins, and recreational facilities; all yards, trees, shrubs and landscaping located on each Lot (provided, however, the replacement of trees and shrubs shall be subject to the Rules and Regulations adopted by the Board); the maintenance of any landscape easement areas; snow removal within the Common Elements,

sidewalks and driveways; and, the yard drainage/water collection system located along the western boundary of the Subdivision.

The Association shall make the determination as to whether or not maintenance is necessary and when such maintenance, repair, replacement and care shall be done, and its determination shall be binding. Declarant shall have the right to employ a manager to oversee and implement the Association's maintenance obligations, and any such management fees incurred thereby shall be paid by the Association, which shall be a Common Expense of the Association. The Association shall also perform the other duties prescribed by this Declaration or the Association's Rules and Regulations, as noted hereinabove. All rights reserved by Declarant in this Declaration shall automatically pass to the Association when Class B Membership ceases pursuant to Section 4.4.2 above, and thereafter any reference to Declarant shall be construed to mean the Association.

7.2 Limitations on Association's Maintenance Obligations.

7.2.1 The Association did not construct the improvements, including the Dwelling Units. The Association does not warrant in any way or for any purpose, the improvements in the Subdivision.

7.2.2 The Association shall have a reasonable time in which to make any repair or do any other work, which it is required to do under the Constituent Documents. The Association must first have actual knowledge of a problem. Any determination of the reasonableness of the Association's response, must allow for the facts that the Association is volunteer and that the funds available to the Association are limited.

7.2.3 In case of ambiguity or omission, the Board may interpret the Declaration and the other Constituent Documents, and the Board's interpretation shall be final if made without malice or fraud. Notwithstanding the foregoing, the Declarant may overrule any interpretation affecting it, made within the Development Period; and such interpretation cannot be enforced against the Declarant, its successors or assigns.

7.3 Maintenance Obligation of the Lot Owners. The responsibilities of each Lot Owner shall include:

7.3.1 To maintain, keep in good order, repair and replace at his or her expense all portions of his or her Dwelling Unit, including without limitation, the surface of interior walls, and of ceilings and floors; the interior of all Dwelling Unit doors as well as the replacement of same; all vestibules and entryways of the Dwelling Unit; windows, weather-stripping, window frames, locks, door frames and hardware, glass and screens; any driveway located on a Lot; and all internal installations of a Dwelling Unit such as appliances, smoke detectors, heating, ventilating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the Dwelling Unit boundaries and any other wires, pipes, conduit, equipment, improvements and heating or air conditioning equipment located inside or outside the Dwelling Unit boundaries designated and installed for the exclusive purposes of servicing the Dwelling Unit; all garage doors as well as the replacement of the same, all other portions of the garages, including without limitation garage door tracks, hardware and automatic openers, the interior surface of the walls, floors and ceilings of the garages; patios, porches and balconies, including any flooring and carpeting; chimneys if any; dryer vents and all other associated structures and fixtures which are appurtenances to his or her Dwelling Unit. The foregoing includes, without

limitation, responsibility for all breakage, damage, malfunctions and ordinary wear and tear of such items. Any repair, replacement and maintenance work to be done by an Owner must comply with the Constituent Documents and any Rules and Regulations of the Association including architectural control and visual harmony.

7.3.2 To perform his/her responsibilities in such manner so as not unreasonably to disturb other persons residing within the Subdivision.

7.3.3 Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the Dwelling Unit without the written consent of the Association.

7.3.4 To promptly report to the Association or its managing agent any defect or need for repairs, the responsibility for the remedying of which is with the Association.

7.3.5 Each Lot Owner shall be deemed to agree by acceptance of delivery of a deed to a Lot, to repair and/or replace at his or her expense all portions of the Common Elements which may be damaged or destroyed by reason of his or her own intentional or negligent act or omission, or by the intentional or negligent act or omission of any invitee, licensee family member, including, but not limited to any repairs necessary which result from damage incurred by pets or vehicles owned by the Lot Owner, or owned by any guest, invitee or licensee of such Lot Owner.

ARTICLE 8. EASEMENTS AND ENCUMBRANCES

8.1 Easement for Encroachments. The building(s), all utility lines, and all other improvements as originally constructed shall have an easement to encroach upon any Lot and upon any deviations in construction from the plans contained in this Declaration as a result of the location of the building, utility lines and other improvements across boundary lines between and along Lots and/or the Common Elements, or as a result of building or improvement movement or alterations or additions from time to time, providing that such alterations or additions have complied with the requirements of this Declaration.

If by reason of the construction, settlement or shifting of the buildings or by reason of the partial or total destruction and rebuilding of the buildings, or improvements constituting part of the Subdivision, any part of the Common Elements shall encroach upon any part of a Lot, or any part of a Lot shall encroach upon any part of the Common Elements, or any part of a Lot shall encroach upon any part of any other Lot; or if by reason of the design or construction or rebuilding of the utilities system within the Subdivision any pipes, ducts, or conduits serving a Lot shall encroach upon any other Lot, easements are hereby established, granted and reserved, for the maintenance of any such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Lot Owner and/or Association, as the case may be, so long as all or any part of the building containing such Lot shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the Owner of any Lot if such encroachment occurred due to the willful conduct of such Owner.

8.2 Lot's Utility Easements. Easements are granted in favor of each Lot Owner to and throughout the Common Elements and the Lots as may be necessary for the use of water, gas, sewer, power, other utility services including power and communication and drainage pipes, now or

hereafter existing and for the purpose of maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components through the Common Elements and the Lots.

8.3 Utility Easements. Easements are reserved and/or granted hereby in favor of the Declarant, Builder and/or the Association through each Lot for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components throughout the Common Elements. Each Lot Owner and/or his respective mortgagee by acceptance of a deed conveying such ownership interest and each mortgagee encumbering such ownership interest, as the case may be, hereby irrevocably appoint Declarant or the Association, as the case may be, as his attorney in fact, coupled with an interest, and authorize, direct and empower such attorney, at the option of the attorney, to execute, acknowledge and record for and in the name of such Lot Owner and his mortgagee, such easements or other instruments as may be necessary to effect the purpose of this Section. The easements may be assigned and/or granted by the Declarant and/or the Association to any utility or service company.

8.4 General Easement. An easement is hereby reserved and/or granted in favor of the Declarant, Builder and/or the Association in, on, over and through the Common Elements, the Lots and/or Dwelling Units for the purposes of maintaining, cleaning, repairing, improving, regulating, operating, policing, replacing and otherwise dealing with the Common Elements, Lots and/or Dwelling Units, including all improvements thereon and specifically the yard drainage/water collection system that runs along the western boundary of the Subdivision.

8.5 Access Easement. Appurtenant to each Lot is an easement over any Common Element, for necessary pedestrian and vehicular ingress and egress to and from any such Lot over the Common Elements, to and from a thoroughfare. The easement shall be over such walkways, driveways, or other ways as are designated by the Declarant, Builder and/or the Association. Declarant represents that as of the date of this Declaration, none of the walkways, driveways or other means of access necessary for pedestrian and vehicular ingress and egress are designated as part of the Common Elements.

8.6 Common Private Elements. Any Lots sharing a Common Private Driveway Easement shall be subject to and benefited by a perpetual non-exclusive easement for ingress and egress over the Common Private Driveway. The Owners of such Lots shall use the Common Private Driveway situated on the easements with due regard for the rights of any other Owner having a similar right to use of such driveway. No Owner shall use or permit the use of the driveway in a manner which impairs the right of way of any other Owner to its use, nor shall any Owner park or store vehicles or personal property on, or obstruct or encroach upon, or permit the use of, or permit the obstruction of or encroachment upon, the Common Private Driveway in any manner whatsoever without the concurrence of all Owners entitled to use the Common Private Driveway.

The Owners using any Common Private Driveway shall share equally in the expense and costs of maintaining, improving and repairing the Common Private Driveway, except that any damage other than ordinary wear and tear caused by any Owner, or any party claiming through such Owner, whether by negligence or willful misconduct, shall be repaired at the expense of such Owner. The driveway shall be maintained in good order and repair and in a condition substantially similar to that of its original construction. Upon conveyance of a Lot, the grantor of such Lot shall

be, as of the closing date for such conveyance, relieved of the obligation to share in the expense and cost of future maintenance and repair imposed hereby, and those obligations shall bind thereafter the grantee of said conveyance. The grantor shall, however, be obligated personally during and after his/her period of ownership for expense and costs incurred for maintenance and repair during his/her period of ownership of the Lot. The obligations and responsibilities for the enforcement of the provisions contained within this Section 8.6 shall fall upon the Lot Owners served and benefited by the Common Private Driveway and shall not be an obligation or responsibility of the Association. The obligation of an Owner of a Common Private Driveway to share in the cost and expense of maintaining a Common Private Driveway is separate and distinct from the obligation of such Owner to pay the Assessments levied pursuant to Article 5 above.

8.7 Use of Easement. Any use of the rights and easements granted and reserved in this Article shall be reasonable. If any damage, destruction, or disturbance occurs to a Lot or any part of the Common Elements as a result of the use of any easement or right, the Lot or the Common Element shall be restored by the Association promptly in a reasonable manner at the expense of the person or persons making the use of the easement or right that resulted in the damage, destruction or disturbance. Before beginning work, Association may require all or any part of the expected expense to be prepaid by that person or those persons liable for the expense. No easement may be granted across, through, over, or under any Lot or Common Element which materially restricts ingress and egress to the Lot or Common Element, unless reasonable alternate ingress and egress is provided or unless the restrictions is only temporary.

8.8 Reservation of Access Easement by Declarant. Declarant reserves an easement for itself, its grantees, successor and assigns, to enter upon the Property for access, including ingress and egress for both vehicles and pedestrians, to and from any public street, road, land, walkway or right-of-way. The easement shall be over the streets, sidewalks, bridges and other access ways now or hereafter forming part of the Subdivision.

8.9 Declarant's Easements. The easements and grants reserved for the Declarant also benefit and bind any heirs, successors and assigns of Declarant and their respective guests, invitees or lessees.

8.10 Easement to Run with Land. All easements and rights described in this Article are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Owner, purchaser, mortgagee, and other person or entity now or hereafter having an interest in the Subdivision, or any part or portion of it.

8.11 Reference to Easements and Deeds. Reference in the respective deeds of conveyance or any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees in said instruments as fully and completely as those such easements and rights were recited fully and set forth in their entirety in such instruments.

ARTICLE 9. **INSURANCE**

9.1 General Insurance. The Association shall obtain and maintain a master policy of fire

and extended coverage, vandalism, malicious mischief and liability insurance, and if required by law, workmen's compensation insurance with respect to the Subdivision and the Association's administration thereof in accordance with the following provisions:

(a) The master policy shall be purchased by the Association for the benefit of the Association, the Lot Owners and their mortgagees as their interest may appear, subject to the provisions of this Declaration and the Code of Regulations. The "master policy" may be made up of several different policies purchased from different agencies and issued by different companies.

(b) All the Common Elements which are located on the Property shall be insured against perils covered by a standard extended coverage endorsement, in an amount not less than one hundred (100%) percent of the replacement value thereof, with a deductible agreed to by the Board.

(c) Such master policy of insurance shall contain comprehensive general liability insurance, including bodily injury, property damage and medical payments insurance and for claims related to employment contracts to which the Association is a party, in an amount determined by the Board.

(d) Such master policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice to the Association and to any mortgagee or mortgagees of any Lot Owner not less than thirty (30) days prior to any expiration, substantial modification or cancellation of such coverage.

(e) Such insurance by the Association shall be without prejudice to the right of the Owner of a Lot to obtain insurance covering improvements and betterments of and within a Dwelling Unit; however, no Lot Owner may at any time purchase individual policies of insurance covering any item which the Association is required to insure.

(f) If economically feasible and available, the Association shall have its liability insurance contain cross-liability endorsements or appropriate provisions to cover liability of the Lot Owners, individually and as a group (arising out of their ownership interest in the Common Elements), to another Lot Owner. The amount of the public liability insurance shall be reasonably determined by Association.

9.2 Fidelity Insurance. The Association may, in its discretion, purchase fidelity coverage against dishonest acts on the part of Officers and employees, Members of the Association, members of the Board, trustees, employees or volunteers responsible for the handling of funds collected and held for the benefit of the Lot Owners. The fidelity bond or insurance may name the Association as the named insured and can be written in an amount sufficient to provide protection for the insured's total Regular Assessment, plus all accumulated reserves and all other funds held by the Association either in its own name or for the benefit of the Lot Owners.

9.3 Trustees' and Officers' Errors and Omissions. The Association may, in its discretion, purchase insurance to protect itself and to indemnify any Trustee or Officer, past or present against expenses actually and reasonably incurred by him/her in connection with the defense of any action.

suit or proceeding, civil or criminal, in which he/she is made a party by reason of being or having been such Trustee or Officer, except in relation to matters as to which he/she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the Association; or to obtain such fuller protection and indemnification for Trustees and Officers as the law of Utah permits.

9.4 Premiums. All premiums upon insurance purchased by the Association shall be Common Expenses. Notwithstanding the foregoing, the Lot Owners may be responsible for certain deductibles to the insurance policies purchased by the Association as outlined in 9.1 and 9.7 herein.

9.5 Proceeds. Proceeds of all insurance policies owned by the Association shall be received by the Association for the use of the Lot Owners and their mortgagees as their interest may appear; provided, however, the proceeds of any insurance received by the Association because of property damage shall be applied to repair and reconstruction of the damaged property, except as may otherwise be permitted by this Declaration.

9.6 Power of Attorney. Each Lot Owner shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of the master policy or any other insurance policy obtained by the Association. Without limitation on the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefore, to collect proceeds and to distribute the same to the Association, the Lot Owners and their respective mortgagees as their interest may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Lot Owners and the Subdivision as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters.

9.7 Responsibility of Lot Owner. The Association shall not be responsible for procurement or maintenance of any insurance covering any Dwelling Unit, its contents, nor the liability of any Lot Owner for injuries therein not caused by or connected with the Association's operation, maintenance or use of the Common Elements or other property located in the Subdivision. Each Lot Owner shall, at his or her own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of or occurring within his or her Dwelling Unit or on his or her Lot. In addition, each Lot Owner shall maintain fire and extended coverage insurance on the contents of his/her Dwelling Unit, including any partitions, trim, drywall, built-in fixtures, equipment and appliances, and on the improvements and betterments which are located in his/her Dwelling Unit (collectively, the "Improvements"). The Association may request the Lot Owner to provide a copy of the policy(s) to the Association evidencing this insurance coverage at any time.

Each Lot Owner agrees that if any Owner(s) damages any part of the Subdivision which is covered under the Association's insurance policy, the Owner or Owners causing such damage shall be responsible for paying the lesser of: (a) the insurance deductible due under the Association's insurance policy; or (b) the cost to repair and/or replace any damage to a building or other improvements, which amount shall be due within ten (10) days after the delivery of written notice of such deductible due or replacement/repair costs by the responsible Lot Owner(s) or twenty (20) days after mailing of such notice by certified mail, whichever occurs first. In the event a Lot Owner refuses or fails to pay the insurance deductible or replacement/repair costs in the time period

provided in the preceding sentence, the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such Owner as an Individual Assessment.

ARTICLE 10.
HARMONY, ENVIRONMENTAL CONTROLS

10.1 Architectural Control Committee. Except for original construction of the Dwelling Unit or as otherwise in these covenants provided, no building, fence, electric pet fence, sidewalk, drive, or other structure, plus anything attached to any structure visible from the outside of the structure shall be erected, placed, altered, or maintained upon the Subdivision nor shall any exterior addition to or change (including any change in color) or alteration therein be made until the proposed building plans, specifications, exterior color and finish, plot plans (showing the proposed location of such building or structure, drives and parking areas) shall have been submitted to and approved in writing by the Board of Trustees of the Association, or by any architectural control committee appointed by said Board of Trustees. Refusal of approval of plans, location or specification by said Board of Trustees or architectural control committee may be based upon any ground, including, without limitation, lack of harmony of external design, color, location or relation to surrounding structures and topography and purely aesthetic considerations which, in the sole and uncontrolled discretion of said Board of Trustees or architectural control committee shall deem sufficient. No alterations may be made in such plans after approval by the Board of Trustees or architectural control committee is given except by and with their prior written consent. One copy of all plans, specifications and related data shall be furnished to the Board of Trustees or architectural control committee for its records.

ARTICLE 11.
USE RESTRICTIONS

11.1 Use and Occupancy. The Association shall make Rules and Regulations to govern the use and occupancy of the Subdivision. In addition, the following covenants, conditions, and restrictions, as to use and occupancy shall run with the land and shall be binding upon each Lot Owner, his/her heirs, invitees, licensees and assigns.

11.2 Purpose of Subdivision. Except as otherwise provided in this Declaration, no part of the Subdivision shall be used for other than housing and the common recreational purposes for which the property was designed, and each Lot shall be used only for residential purposes. Except for the construction, sales and management activities of the Declarant, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, may be conducted, maintained, or permitted on any part of the Property. To the extent permitted by law, an Owner may use a portion of his or her Dwelling Unit for an office or studio (other than a music, dance studio and/or daycare) provided that the activities conducted therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant; and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Subdivision or in and out of said Owner's Lot.

11.3 Parking. All Dwelling Units shall have an attached garage to accommodate a minimum of two (2) cars. A minimum of five (5) guest parking spaces will be provided in the Subdivision, and utilized as such. Except for vehicles being used by persons providing services to the Declarant, the Association, the Lot Owners or otherwise used or authorized to be used at the Subdivision by the Declarant, no part of the Subdivision, except for within an enclosed garage, may be used for the parking of any trailer coach, house trailer, mobile home, automobile trailer, camp car, recreational vehicle, camper, truck which exceeds 3/4 ton, boat, boat trailer, or with letters or other markings over four inches tall or wide, or any other similar vehicle (collectively, "Special Vehicles"). Operative vehicles, other than Special Vehicles, used by a resident of a Lot as a primary source of transportation may be parked in the driveway or garage of a Lot Owner or in the public streets. No auto maintenance and/or repairs may be performed on the Subdivision. Vehicles, whether owned by a Lot Owner or not, parked in violation of any part of this Declaration or in violation of any Rules or Regulations, shall be towed away and stored at the Owner's risk and expense. By parking on the Property, the Owner of the vehicle or other vehicle user hereby waives any claim against the Association resulting directly or indirectly out of the towing, unless the towing can be shown beyond a reasonable doubt to have been done maliciously by the Association. Note that the Association is not obliged to try to determine the owner of a vehicle and first give notice, before towing the vehicle. If a Lot Owner is not sure about the right to park at any particular area or space, the Lot Owner should request, in writing, a written opinion from the Board. If the Board gives the approval sought by the Lot Owner or if the Board does not answer the written request by the Board, the Lot Owner may park in the space until further written notice to the contrary from the Board. If the Lot Owner wishes to appeal the Board's decision, as per the same rules and under the same terms and conditions as appealing a fine, which are set out elsewhere in this Declaration. Note that the Association's right to tow a motor vehicle or vehicle includes the right to immobilize it.

11.4 Exterior Surfaces of Buildings. The exteriors of each Dwelling Unit shall have a combination of brick, stone, cultured stone or other masonry product; stucco; "Hardi Board" or similar product; and architectural grade asphalt shingles. Lot Owners shall not cause or permit anything to be hung or displayed on the inside or outside of windows (except as provided herein) or hung on the outside of the Dwelling Unit doors (excluding decorative door arrangements) or placed on the exterior walls of a building (excluding holiday lights), and no sign (other than those described in Section 11.10 hereof and directional signs or signs concerning the use of the Common Elements), awning, canopy or shutter shall be affixed to or placed upon the exterior walls or roof or any part of the building, or the Common Elements without the prior written consent of the Association. In addition, no more than one (1) yard ornament shall be permitted to be placed on each individual Lot. Unless otherwise approved in writing by the Association, Lot Owners shall not cause or permit any curtains, shades or other window coverings to be hung inside or outside any windows, doorways, and/or patio doors which will show any color on the outside other than white or beige tones. The use of aluminum foil, sheets, newspapers and other non-typical materials for window coverings is prohibited.

11.5 Animals and Pets. No animals of any kind shall be raised, bred, or kept in any Dwelling Unit or in the Common Elements, except that two (2) dogs, two (2) cats or one of each, or two (2) other household pets may be kept in a Dwelling Unit, subject to the Rules and Regulations, provided that it is not kept, bred or maintained for any commercial purpose, and that it is kept subject to the Rules and Regulations of the Association. In its discretion the Board may approve a higher number of pets if such pets are not anticipated to become a nuisance. All Dogs, cats or other household pets must be kept within the confines of the Owner's rear yard or Dwelling Unit except when being held on hand leash by the pet owner of the animal. No Lot Owner shall install a fence

and/or electric fence on any portion of the Common Elements without the prior written consent of the Board. No pet may be "staked", housed, tied up or otherwise left in any Common Element. A Lot Owner shall be responsible for cleaning up after his household pet. Notwithstanding the above, the Association shall have the right to promulgate Rules and Regulations pertaining to the size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pets. Additionally, the right of an occupant to maintain an animal in a Dwelling Unit shall be subject to termination if the Board in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Subdivision or occupants. No dog house or other structure used or intended for the housing or keeping of animals may be constructed, placed or maintained on any part of the Common Elements.

11.6 Nuisances. No noxious or offensive activity shall be carried on in any Dwelling Unit or in the Common Elements or on the Lot of an Owner, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Lot Owners or occupants.

11.7 Holiday Lights. Holiday-type lights shall be erected no sooner than four (4) weeks prior to and removed not later than four (4) weeks after the subject holiday.

11.8 Antennas. No apparatus, free standing antennas or satellite dishes shall be constructed or used on any Lot; provided, however, that a satellite dish or high speed internet antenna, not exceeding eighteen inches (18") in diameter or height, may be placed on a roof top if not visible from the public right of way or roadway view or such other location as approved in writing by Declarant. All television and radio antennae, including CB radio antennae, must be enclosed within the Dwelling Unit located on the Lot. All telephone, electric and other wires of all kinds must be underground.

11.9 Laundry or Rubbish and Open Fires in Common Elements and Facilities. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Elements, any Lot or the exterior of any Dwelling Unit. The Common Elements and each individual Lot shall be kept free and clear of rubbish, debris and other unsightly materials. All trash, garbage or other rubbish shall be deposited only in covered sanitary containers as provided in Section 11.12 below. No open fires shall be permitted on any part of the Subdivision other than fires in charcoal grills or other similar cooking devices located on the deck or back porch of a Dwelling Unit provided it does not violate any local governmental rules and regulations.

11.10 Sign Restrictions. A Lot Owner is permitted to place and maintain a standard "For Sale" sign in the window or front yard of his/her lot or Dwelling Unit; provided, however it shall be of a typical size within the industry. No other sign which is visible from the outside of Dwelling Units may be placed on any part of the Subdivision except as expressly permitted by the Board of Trustees. Declarant and/or the Board shall have the right to immediately remove and dispose of those items in violation of this Declaration. The right is reserved by the Declarant to use any such unsold or unoccupied Dwelling Units or other structures in the Subdivision as models and/or offices in connection with the construction, sale or rental of Dwelling Units.

So long as the Declarant owns a Lot no action may be taken nor may any Rule or Regulation be adopted or amended that would directly or indirectly alter the exterior appearance of any part of the Subdivision; reduce or discontinue any maintenance standard or practice in effect as of the date when the Declarant no longer controls the Board; adversely affect the Declarant's sale or leasing of

any Lots; or otherwise adversely affect the Declarant, any of its rights, or any Lot owned by it without, in each case, first obtaining the Declarant's written consent.

11.11 Alteration of Common Elements. Nothing shall be altered or constructed in or removed from the Common Elements, any Lot or the exterior of any Dwelling Unit except as otherwise provided in this Declaration and except upon the written consent of the Association. In addition, a Lot Owner must obtain the prior written consent of the Board prior to installing and landscaping or planting any flowers, herbs or vegetables, on any portion of the Subdivision.

11.12 Trash Disposal. All trash, garbage, or other rubbish shall be kept at all times in each Lot Owner's garage or behind a fence and shielded from view in the rear yard, except on the days which trash, garbage, or other rubbish is collected by the local waste removal authorities. Any trash containers placed outside by the Lot Owners to be collected by the local waste removal authorities shall only remain outside for a period not to exceed twenty-four (24) hours. The Board shall have the right to dispose of any trash, garbage, or other rubbish of a Lot Owner in violation of this Section 11.12 and may assess the Lot Owner for the cost of such removal, which amount shall be payable as an Individual Assessment.

11.13 Nondiscrimination. No Owner (including the Declarant), or any employee, agent or representative thereof shall discriminate upon the basis of sex, race, age, color, creed or national origin in the sale of any Lot nor in the use of the Common Elements.

11.14 Distributing Materials and Picketing. No person shall engage in the distributing of any materials on any portion of the Common Areas and Facilities without the prior written consent of the Association. Additionally, no person shall engage in any demonstration on any part of the Common Areas and Facilities, including but not limited to picketing of any Unit or any facilities which comprise the Property, marching on the Common Areas and Facilities, carrying signs or gathering for the purpose of demonstrating without the prior written consent of the Association.

11.15 Fencing. No fencing shall be installed (including invisible dog-type fencing) without the prior approval of the Board. Additionally, any fencing installed on a Lot shall match the other fences installed on the Subdivision by Declarant. No front yard fencing shall be allowed.

11.16 Obligation to Keep Lot in Good Condition. Each Lot Owner shall keep each Lot and all structures thereon in such maintenance, repair, appearance and condition as shall comply with the provisions of this Declaration and applicable laws and ordinances.

11.17 Obstruction of Easement Areas. No structure, planting, or other material other than driveways or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement of the installation or maintenance of utilities or which may change, obstruct, or retard direction or flow of any drainage channels in the easement area. The easement area of each Lot and all improvements in the easement area shall be maintained by the Lot Owner except for those improvements for which a public authority or utility company is responsible.

ARTICLE 12. ENFORCEMENT

12.1 Enforcement.

(a) These covenants, conditions and restrictions may be enforced by the Association or any Lot Owner. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate ("Violating Party") any covenant, condition or restriction, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants. In addition to all other amounts due on account of said violation or attempted violation, the Violating Party shall be liable to the parties enforcing the covenants and/or restrictions of this Declaration (the "Enforcing Parties") for all reasonable attorney's fees and court costs incurred by the Enforcing Parties. Failure or forbearance by the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any lawsuit filed to enforce this Declaration by injunction or restraint, there shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants, conditions or restrictions cannot be adequately remedied by action at law or by recovery of damages.

(b) In addition to all other remedies of the Association, the Association shall have the right to assess a maximum fine of \$100.00 per day per violation against any Owner who violates any provision of this Declaration or the Articles, Code of Regulations or Rules and Regulations of the Association after such Owner has been given notice of the violation and an opportunity to be heard with respect to the violation in accordance with such policies and procedures as may be adopted from time to time by the Board of Trustees or as may be set forth in the Code of Regulations.

(c) In addition to the above rights, the Association may also enter upon a Lot or any land upon which a violation exists to remove any violation, perform maintenance or make repairs thereon which is the responsibility of a Lot Owner who has failed to remove said violation or to perform such maintenance or make such repairs after having given such owner at least ten (10) days prior notice, or without giving notice in the event of an emergency.

(d) Any action brought by the Association hereunder may be brought in its own name, in the name of its Board or in the name of its managing agent. In any case of flagrant or repeated violation by a Lot Owner, he or she may be required by the Association to give sufficient surety or sureties for his or her future compliance with the covenants, conditions and restrictions contained in this Declaration, the Code of Regulations and the Rules and Regulations.

12.2 Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

ARTICLE 13.
DURATION, AMENDMENT AND TERMINATION

13.1 Restrictions Run With Land; Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Dwelling Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty-five (25) years from the date of the recording of this Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each, unless amended or terminated as provided in Article 13.

13.2 Amendment or Termination. Prior to the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument executed by Declarant and approved by the Owners of at least sixty-seven percent (67%) of all Lots located in the Property. After the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument approved by the Owners of at least sixty-seven percent (67%) of all Lots located in the Property and fifty-one percent (51%) of the Eligible Mortgagees.

The President of the Board shall determine whether the persons who have approved any amendments or termination of this Declaration constitute Owners of at least sixty-seven percent (67%) of all Lots and fifty-one percent (51%) of the Eligible Mortgagees. Promptly after the approval of any amendment or termination of any part of this Declaration, the President of the Board shall cause to be recorded the written instrument of amendment or termination executed in properly recordable form by the President of the Association and Declarant, if during the Development Period, and the certificate of the President of the Association that the Owners of at least sixty-seven percent (67%) of all Lots and fifty-one percent (51%) of the Eligible Mortgagees have approved such instrument.

The Board shall maintain such copies filed with it by the President as a permanent record and shall make copies thereof available to any Owner at a reasonable cost.

Notwithstanding anything above to the contrary, this Declaration may be amended at any time during the Development Period without the vote of Owners by a written instrument executed by Declarant for the purpose of eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making nominal changes; clarifying Declarant's original intent; making any changes necessary or desirable to meet the requirements of any institutional lender, Federal National Mortgage Association, or other agency which may insure loans on a Lot; provided, however, that no such amendment shall materially affect any Owner's interest in the Association or right, if any, to use the Common Elements. Each Owner and his or her mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering such Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Declarant as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate the provisions of this paragraph.

ARTICLE 14.
MISCELLANEOUS

14.1 Reservation of Rights. Declarant reserves the right in the Subdivision to maintain sales and management offices, model units and advertising signs upon the Common Elements and upon Lots owned by it until the expiration of the Development Period.

14.2 Management and Service Contracts. Any agreement for the professional management of the Subdivision of the Common Elements may not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee upon reasonable notice.

14.3 Binding Determination. In the event of any dispute or disagreement with or between any Owner(s) relating to, or of any other disputes, disagreements or questions regarding, the interpretation or application of the provisions of this Declaration or the Articles or Code of Regulations of the Association, the determination thereof by Declarant for so long as Declarant retains control of the Association; and thereafter by the Board of Trustees of the Association shall be final and binding on each and all such Owners.

14.4 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

14.5 Notices. Except as otherwise provided in this Declaration, any notice to any Owner under this Declaration shall be in writing, shall be effective on the earlier of the date when received by such Owner, or the date which is three days after mailing (postage prepaid) to the last address of such Owner set forth in the books of the Association. The address of an Owner shall be at his Lot (or any of them if more than one) unless otherwise specified in writing to the Association. The Articles and Code of Regulations shall specify the permissible manner of giving notice for voting and all other Association matters for which the manner of giving notice is not prescribed in this Declaration.

14.6 Governing Law. This Declaration shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the State of Utah, and suit to enforce any provision hereof or to obtain any remedy with respect hereto shall be brought in Circuit Court, Salt Lake County, Utah, and for this purpose each Owner by becoming such hereby expressly and irrevocably consents to the jurisdiction of said court.

ARTICLE 15. **MORTGAGEE'S RIGHTS**

15.1 Eligible Mortgagee. For purposes hereof, an "Eligible Mortgagee" is any holder, insurer or guarantor of a first mortgage on any Dwelling Unit who has made written request to the Association (listing its name and address and the Dwelling Unit number or address of the Dwelling Unit on which it has or insures or guarantees the mortgage) for timely written notice of all notices permitted or required by this Declaration or the Code of Regulations to be given to the Dwelling Unit Owner whose Dwelling Unit ownership is subject to such mortgage, even if such Owner has waived the right to receive such notice. All Eligible Mortgagees are entitled to timely written notice of (1) any condemnation or casualty loss that affects either a material portion of the Property or the Dwelling Unit securing its mortgage; (2) any sixty (60) day delinquency in the payment of Assessments or charges owed by the Lot or Dwelling Unit Owner on which it holds the mortgage;

(3) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; (4) any proposed amendment of the Constituent Documents effecting a change in the exclusive easement rights of the Lot or Dwelling Unit securing its mortgage, or any proposed amendment of the Constituent Documents effecting a change in the purposes to which any Dwelling Unit or the Common Elements are restricted; and (5) any proposed action that requires the consent of a specified percentage of Eligible Mortgagees as set forth herein.

15.2 Notice of Rights of Mortgagee of a Lot. Upon written request by a mortgagee to the Association, a mortgagee of a Lot shall be entitled to receive written notification of any Default, not cured within sixty (60) days after its occurrences by the Owner of the Lot of any obligation of the Owner under the Declaration, the Code of Regulations of the Association or the Articles of Incorporation of the Association. The request for notification can be made by any mortgagee of a Lot, its successor or assign. The notification shall be sent not later than the 65th day after the occurrence of an uncured Default.

15.3 Right to Examine Books and Records. An Eligible Mortgagee, their successors or assigns, shall have the right to examine the books and records of the Association.

15.4 Taxes and Insurance. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in Default and which may or have become a charge against any Lot and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Lot, and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Lot Owner.

15.5 Insurance Proceeds and Condemnation Awards. No provision of this Declaration or any other document or instrument affecting the title to the Property, Common Elements, any Lot or the organization or operation of the Association shall give an Owner or any other party priority over any rights of first mortgagees of Lots within the Subdivision pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Common Elements.

THIS DECLARATION, any amendment or supplement hereto, and any amendment or supplement to the Record Plat shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED the day and year first above written.

DECLARANT:

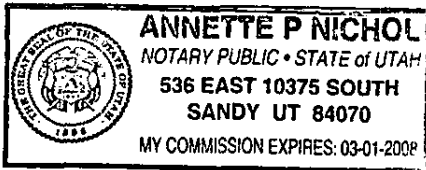
MC MULLIN HOMES, INC., a Utah Corporation

BY: [Handwritten Signature]

ITS: President

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

The foregoing instrument was acknowledged before me this 23rd day of March, 2005 by Bruce McMullin, who acknowledged he is the President of McMullin Homes, Inc.



[Handwritten Signature]
Notary Public

My Commission Expires:
3-1-08

EXHIBIT A
LEGAL DESCRIPTION
HEARTHSTONE SUBDIVISION

BEGINNING AT A POINT ON THE NORTH LINE OF PROPERTY CONVEYED TO SALT LAKE COUNTY PER CORRECTED WARRANTY DEED, RECORDED JULY 29, 1975 IN BOOK 3925 AT PAGE 500 OF THE OFFICIAL RECORDS, SAID POINT BEING SOUTH 1320.83 FEET AND EAST 894.77 FEET FROM THE NORTHWEST CORNER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE MERIDIAN, AND RUNNING NORTH 179.85 FEET; THENCE NORTH 18°48'00" WEST 83.78 FEET; THENCE NORTH 200.00 FEET; THENCE NORTH 27°44'35" WEST 100.23 FEET; THENCE NORTH 218.11 FEET; THENCE NORTH 18°04'11" WEST 249.92 FEET; THENCE NORTH 04°08'45" WEST 81.06 FEET; THENCE NORTH 19°40'58" EAST 110.37 FEET TO THE SOUTHERLY LINE OF SEGO LILY DRIVE, SAID POINT BEING ON A 660.00 FOOT NON-TANGENT RADIUS CURVE (CENTER BEARS SOUTH 14°39'18" WEST); THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY LINE OF SEGO LILY DRIVE THE FOLLOWING (3) COURSES: (1) SOUTHEASTERLY ALONG THE ARC OF A 660.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE 39°20'42", A DISTANCE OF 453.22 FEET; (2) SOUTH 36°00'00" EAST 71.59 FEET TO THE POINT OF CURVATURE; (3) SOUTHEASTERLY ALONG THE ARC OF A 673.67 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 25°53'30", A DISTANCE OF 304.43 FEET TO THE WESTERLY LINE OF SANDY CITY CORPORATION PROPERTY AS CONVEYED BY WARRANTY DEED RECORDED AUGUST 7, 1998 AS ENTRY NO. 7051219 IN BOOK 8059 AT PAGE 2271 OF OFFICIAL RECORDS; THENCE SOUTH 29°36'49" WEST ALONG SAID WESTERLY LINE 39.04 FEET (SOUTH 29°20'16" WEST 37.29 FEET RECORD); THENCE SOUTH 00°05'37" EAST ALONG SAID WESTERLY LINE 53.00 FEET TO THE NORTH LINE OF THE SANDY CITY CORPORATION PROPERTY AS CONVEYED BY WARRANTY DEED RECORDER SEPTEMBER 14, 1989 AS ENTRY NO. 4823094 IN BOOK 6159 AT PAGE 0338 OF OFFICIAL RECORDS; THENCE NORTH 89°36'17" WEST ALONG SAID NORTH LINE 270.00 FEET TO THE NORTHWEST CORNER OF SAID SANDY CITY CORPORATION PROPERTY; THENCE SOUTH 00°05'37" EAST ALONG THE WESTERLY LINE OF SAID SANDY CITY CORPORATION PROPERTY 330.00 FEET TO THE NORTHWEST CORNER OF WHITE CITY NO. 57 PHASE 2 SUBDIVISION; THENCE SOUTH 00°23'40" WEST ALONG SAID WESTERLY LINE OF SAID WHITE CITY NO. 57 PHASE 2 SUBDIVISION 268.28 FEET TO SAID NORTH LINE OF THE SALT LAKE COUNTY PROPERTY; THENCE NORTH 89°33'14" WEST ALONG SAID NORTH LINE OF THE SALT LAKE COUNTY PROPERTY 226.32 FEET TO THE POINT OF BEGINNING.

28-16-101-021

CONTAINS 8.677 ACRES, MORE OR LESS
CONTAINS 50 LOTS

EXHIBIT B
BY-LAWS & CODE OF REGULATIONS
OF THE
HEARTHSTONE HOMEOWNERS' ASSOCIATION, INC.

ARTICLE 1.
NAME AND LOCATION

The name of the corporation is the Hearthstone Homeowners' Association, Inc., hereinafter referred to as the "Association". The principal office of the Association shall be located at 1098 E. South Union Avenue, Midvale, UT 84047, but meetings of Members of the Association and Board of Trustees may be held at such places within the State of Utah as may be designated by the Board of Trustees.

ARTICLE 2.
DEFINITIONS

Each of the terms used herein shall have the same meaning as set forth in the Declaration of Easements and Protective Covenants, Conditions and Restrictions for the Hearthstone Subdivision ("Declaration") made by McMullin Homes, Inc., a Utah corporation ("Declarant") dated MARCH 23, 2005, and of record at the Salt Lake County, Utah Recorder's Office. The Declaration may be, from time to time, amended or supplemented.

ARTICLE 3.
MEETING OF MEMBERS

3.1 Annual Meetings. The first Annual Meeting of the Members shall be held within one (1) year from the date of incorporation on such date as the initial Board shall determine. Each subsequent regular Annual Meeting of the Members shall be held in the State of Utah, within the fourth quarter of each calendar year, upon proper notice, at a date, time and place as may be reasonably set by the Board of Trustees (hereinafter referred to as "Board" or "Trustee"). If the day for the Annual Meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. Each Annual Meeting shall be open to all Members.

3.2 Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board. Special meetings shall be called by the President upon written request, delivered to the President in person or by certified mail, of Members having at least twenty-five percent (25%) of the voting power of all Members. Upon receipt of this request, the President shall immediately cause written notice to be given of the special meeting to be held on a date not less than seven (7) nor more than thirty (30) days after receipt of this request. If written notice is not given to the Members within ten (10) days after the delivery of the request, the Members making the request may call the special meeting and give written notice of it.

3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by or at the direction of the President, Secretary or person authorized to call the meeting, by (a) personal delivery, or (b) mailing a copy of such notice, postage prepaid, at least seven (7) days, but no more than thirty (30) days before such meeting to each Member entitled to vote thereat. The notice shall be addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Notice of the date, time and place, and purpose(s) of any meeting of Members may be waived by any Member, before or after the meeting, by a writing filed with the records of the Association. The attendance of any Member at any meeting without protesting, before or at the beginning of the meeting, the lack of proper notice, shall be deemed a waiver by the Member of notice of the meeting.

3.4 Quorum; Adjournment. A vote submitted by mail shall not be counted in establishing a quorum for any meeting. Except as may be otherwise provided by law, the Articles of Incorporation, the Declaration, or these By-Laws and Code of Regulations, there shall be a quorum at any meeting of Members where Members who hold at least thirty percent (30%) of the total voting power of Members in good standing are present, in person or by proxy. For a vote on any matter to be valid, the quorum requirement must be met at the time of completion of that vote. If such quorum shall not be present or represented at any meeting, a majority of the Members entitled to vote thereat, shall have power to adjourn that meeting to a day which is not more than one (1) week from the day the original meeting was called. Notice of the adjournment may not be given if the time and place to which the meeting is adjourned are fixed and announced at the original meeting. When the meeting reconvenes, the quorum requirement shall be lowered to twenty percent (20%) of the total voting power of the Members in good standing which must be present, in person or by proxy.

3.5 Proxies. At all meetings of Members, each Member may vote in person or by proxy. The person designated a proxy need not be a Lot Owner. All proxies shall be in writing and filed with the Secretary at least twenty-four (24) hours prior to the meeting, except that the Board may waive this time requirement for a particular meeting if the waiver would not delay the meeting and would otherwise be fair and reasonable. Any Owner may revoke a proxy only by written notice of revocation to the Board of Trustees. A proxy is void if it is not dated or purports to be revocable without notice. Except as hereinafter provided, a proxy shall be terminated one year after its date, unless it specifies a shorter time. Every proxy shall automatically cease upon conveyance by the Member of his/her Lot, except as otherwise provided in the Declaration or the Articles of Incorporation, about the proxy given to Declarant. If a first mortgagee has been designated a proxy under the terms of a first mortgage covering a Lot the presentation to the Board of Trustees of a copy of the mortgage containing the proxy designation shall be notice of that designation, and, if the mortgage so states, of the irrevocability of that designation. Written notice to the Board of a revocation of a proxy designation shall not affect any vote or any act previously taken.

3.6 Voting by Mail by Association Members. Any Member may cast his/her written vote on any proposal to be voted upon at any meeting of the Members of the Association by mailing or personally delivering such written vote to the Secretary of the Association within the period seven (7) days before the date of the meeting. Such written votes shall be filed with the records of the Association and, in no event, shall any action be taken or approved by the Association with the approval of less than the percentage of voting power required by the

provisions of the Declaration or without the consent of any party that is required by any of said provisions. Members who have voted by mail shall not be counted in determining whether the quorum has been met at a meeting of the Members.

3.7 Membership of Association. Declarant and every Owner of a Lot which is subject to Assessment, shall be a Member of the Association. Such Owner and Member shall abide by the Association's Rules and Regulations, shall pay the Assessments provided for in the Declaration, when due, and shall comply with decisions of the Association's governing body. Conveyance of a Lot (except conveyance to a mortgagee) automatically transfers membership in the Association without necessity of further documents. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

3.8 Classes of Membership. The Association shall have two (2) classes of Membership:

3.8.1 Class A Members. Every person, group of persons, or entity which is a record Owner of a fee interest in any Lot upon which a Dwelling Unit has been erected within the Property, shall automatically be a Class A Member of the Association except the Declarant during the Development Period; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot upon which a Dwelling Unit has been constructed which is subject to Assessment. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership; provided that any Class A Member with respect to whom a notice of Default has been issued by the Board pursuant to the Declaration, or who has had his/her right or privilege of use and enjoyment of the Common Elements suspended pursuant to the Declaration, shall not be entitled to vote during any period which any such Default or suspension continues. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot portion shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

3.8.2 Class B Members. The Class B Member during the Development Period shall be the Declarant, and such Member shall have seven (7) votes for each Lot in which the Declarant holds the interest otherwise required for Class A Membership multiplied by the number of Dwelling Units located or proposed by the Declarant to be located on such Lot. The Class B Membership shall cease to exist upon the expiration of the Development Period and shall be converted to a Class A Membership with one (1) vote for each Lot owned by Declarant.

3.9 Voting. Unless otherwise expressly set forth by law, the Declaration, the Articles of Incorporation or these Code of Regulations, the affirmative vote of fifty-one percent (51%) of the voting power of the Members voting on any matter at a meeting of Members shall be sufficient to determine that matter, provided that any quorum requirement is met at the time of completion of that vote.

3.10 Order of Business. The order of business at all meetings of Members shall be as follows: (1) calling of meeting to order; (2) roll-call; determination of whether there is a quorum; (3) proof of notice of meeting or waiver of notice; (4) reading of minutes of meeting; (5) reports of officers; (6) report of committees; (7) election of the Board of Trustees (when appropriate);

(8) unfinished and/or old business; (9) new business; (10) adjournment.

3.11 Conduct of Meetings. The President shall preside over all meetings of the Members, and the Secretary shall keep the minutes of the meeting and record in the minute book all resolutions adopted, as well as a record of all transactions occurring thereat.

3.12 Action by Association Members Without a Meeting. Any action which may be authorized or taken at a meeting of the Members, except the election of Board Members, may be authorized or taken without a meeting in a writing or writings signed by Members having a simple majority of the total voting power of all Members in good standing, which writing(s) shall be filed with the records of the Association. Written notice of any action proposed to be taken by such written consent of Members shall be sent to all parties who are entitled to notices under the Declaration not less than five (5) days prior to commencing the circulation of the action for written consent among the Members.

ARTICLE 4. **BOARD OF TRUSTEES-TERM OF OFFICE**

4.1 Number. Until the Development Period Special Meeting (as hereinafter defined), the Board shall consist of three (3) Trustees appointed by Declarant, who shall serve until their respective successors are appointed and qualified. Trustees elected by Declarant need not be Members of the Association. A Trustee elected by the Class A Members must be an Owner of a Lot or Dwelling Unit or a spouse of an Owner of a Lot or Dwelling Unit, except that if an Owner is a corporation, partnership, joint venture, or other entity, the Owners may elect as a Trustee an officer, partner, joint venturer, or like individual affiliated with this Owner.

Not more than thirty (30) days after the earlier of the following events occurs, the President of the Association shall call a special membership meeting ("Development Period Special Meeting"):

- (a) the expiration of the Development Period; or
- (b) Declarant gives up, in writing, the right to appoint Trustees.

At the Development Period Special Meeting, the Trustees appointed by Declarant shall be deemed removed from office, and the Members, including Declarant if it is then an Owner, shall elect a new Board consisting of five (5) Trustees who all shall be Lot Owners or who shall otherwise be qualified pursuant to the first paragraph of this Section 4.1 above to be a Trustee. The persons so elected shall take office immediately upon election.

Notwithstanding anything above to the contrary, Declarant may, by written notice to the Board, at or before any Annual Meeting, relinquish to the Lot Owners, Declarant's right to elect one or more Trustees at such Annual Meeting pursuant to this Section.

4.2 Term of Office. The Board of Trustees prior to the Development Period Special Meeting shall be appointed at the Annual Meetings, by Declarant, or at any special meeting called for that purpose. At the Development Period Special Meeting and at the Annual Meetings thereafter, or any special meeting called for that purpose, the Board of Trustees shall be elected by the Lot Owners.

The terms of not less than one-third (1/3) of the Trustees shall expire annually. Accordingly, the Trustees elected by the Lot Owners at the "Development Period Special Meeting" shall be elected to staggered terms of the following lengths: two (2) Trustees shall be elected to serve until the next Annual Meeting following the Development Period Special Meeting, and three (3) Trustees shall be elected to serve until the second Annual Meeting following the Development Period Special Meeting. The three (3) Trustees with the most votes shall be the Trustees who shall serve until the second Annual Meeting following the Development Period Special Meeting.

A Trustee appointed by Declarant prior to the Development Period Special Meeting shall serve until Declarant removes the Trustee, the Trustee dies or resigns, or a successor is elected by the Lot Owners at the Development Period Special Meeting. Except as provided in the preceding paragraph, each Trustee elected by the Lot Owners after the "Development Period Special Meeting" shall serve for a two-year term and shall remain a Trustee until the earlier of the next Annual Meeting of Lot Owners and until a successor is elected, or until the Trustee's earlier resignation, removal from office, or death.

4.3 Resignation; Removal, Vacancies. A Trustee may resign at any time by giving written notice to the Board, the President or the Secretary. The resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

A Trustee appointed by Declarant may be removed by Declarant at any time, with or without cause. An elected Trustee whose removal has been proposed by a Lot Owner shall be given an opportunity to speak at any Annual Meeting or special meeting of the Members, after which that Trustee may be removed, with or without cause, by a majority vote of the Members voting at a meeting of the Members.

If a vacancy is created because of resignation, removal, or death, a successor shall be appointed or elected to serve for the unexpired term of the departed Trustee. Declarant shall appoint a successor for any appointed Trustee, and the Members shall elect a successor for any elected Trustee using the procedure set forth in Article 5 below, at any Annual Meeting of the Members or at any special meeting of the Members called for the purpose of filling this vacancy.

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

ARTICLE 5.

NOMINATION AND ELECTION OF TRUSTEES

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

number of vacancies that are to be filled. Such nominations shall be made from among Members or non-members. Notwithstanding the foregoing, as long as Declarant has the right to appoint all Trustees, Declarant also has the right to nominate all Trustees.

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

ARTICLE 6.

MEETINGS OF TRUSTEES

6.1 Annual Organizational Board Meeting. The Annual Organizational Board Meeting of the Board shall be held within ten (10) days after each Annual Meeting of the Members, at such time and place as shall be fixed by the Board.

6.2 Regular Meetings. Unless waived by the Board, regular meetings of the Board shall be held no less than quarterly, on the date and at the time and place fixed from time to time by the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

6.3 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President of the Association, or by any two (2) Trustees. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

6.4 Notice of Meetings; Attendance by Members. Notice of the date, time, and place of organizational, regular, and special meetings of the Board shall be given to each Trustee by one of the following methods (a) personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Trustee or to a person at the Trustee's home or place of business who would reasonably be expected to communicate such notice promptly to the Trustee; or (d) by facsimile transmission. All such notices shall be given or sent to the Trustee's address, telephone number, or facsimile number as shown on the records of the Association. Notice sent by first class mail shall be postmarked at least seven (7) days before the time set for the meeting. Notices given by personal delivery, telephone, or by facsimile transmission shall be at least seventy-two (72) hours before the time set for the meeting.

No notice need be given to non-Trustee Members of organizational, regular, or special meetings of the Board, however, a non-Trustee Member may attend any organizational, regular, or special meeting of the Board, but may not participate in any such meeting unless given permission to do so by the President or other officer of the Association who is presiding at the meeting. A non-Trustee Member may not vote at a meeting of the Board.

6.5 Waiver of Notice. Waiver of notice of meetings of the Trustees shall be deemed the equivalent of proper notice. Any Trustee may, in writing, waive notice of any meeting of the Board, either before or after the holding of such meeting. Such writing shall be entered into the minutes of the meeting. Attendance of any Trustee at any meeting without protesting the lack of

proper notice, prior to or at the commencement of the meeting, shall be deemed to be a waiver by him or her of such meeting.

6.6 Quorum; Adjournment. A simple majority of the Trustees then in office shall constitute a quorum for any meeting, provided that the quorum requirement must be met at the time of completion of a vote on any matter for that vote to be valid. Whether or not a quorum is present, a majority of the Trustees present at a meeting may adjourn that meeting. Notice of the adjournment need not be given if the time and place to which the meeting is adjourned are fixed and announced at the meeting.

6.7 Voting Power. At any meeting of the Trustees at which a quorum is present, all matters shall be determined by a majority vote of those voting on the matter, except as may be otherwise expressly provided in the Declaration and these Code of Regulations. The President may cast an additional vote to break a tie vote on any matter.

6.8 Action Taken Without a Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting in a writing or writings signed by all the Trustees, which writing(s) shall be filed with the records of the Board. Any action so approved shall have the same effect as though taken at a meeting of the Trustees.

ARTICLE 7.

POWERS AND DUTIES OF THE BOARD OF TRUSTEES

7.1 Powers. The Board shall exercise all powers and authority, under law, and under the provisions of the Declaration, that are not specifically and exclusively reserved to the Members by law or by other provisions thereof, and without limiting the generality of the foregoing, the Board shall have the right, power and authority to:

7.1.1 Adopt and publish Rules and Regulations governing the use of the Common Elements and the personal conduct of the Members, occupants and their guests thereon, and to establish penalties for the infraction thereof;

7.1.2 Declare the office of a Member of the Board of Trustees to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Trustees;

7.1.3 Obtain insurance coverage not less than that required pursuant to the Declaration;

7.1.4 Enforce the covenants, conditions and restrictions set forth in the Declaration;

7.1.5 Repair, maintain, and improve the Common Elements;

7.1.6 Suspend the voting rights of a Member during any period in which such Member shall be in Default in the payment of any Assessment levied by the Association, as more fully provided in the Declaration;

7.1.7 Employ a manager, an independent contractor and/or such other employees as it deems necessary, and to prescribe their duties; and

7.1.8 Exercise for the Association all powers, duties and authority vested in or delegated to the Association by provisions of these Code of Regulations, the Articles of Incorporation, or the Declaration not specifically reserved thereby to others, including any powers necessary or convenient to carry out its duties and authority. The powers of the Board shall be construed to be as broad as possible.

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

7.2.1 Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the Annual Meeting of the Members, or at any special meeting when such statement is requested in writing by Members representing thirty percent (30%) of each class of Members who are entitled to vote;

7.2.2 Supervise all Officers, agents and employees of the Association, and to see that their duties are properly performed, with the Board having full power to hire and fire;

7.2.3 As more fully provided in the Declaration, to:

(i) Establish, enforce, levy and collect Assessments as provided in the Declaration;

(ii) Give written notice of each Assessment to every Member subject thereto within the time limits set forth therein;

(iii) Foreclose the lien against any property for which Assessments are not paid within a reasonable time after they are authorized by the Declaration to do so, or bring an action at law against the Member(s) personally obligated to pay the same, or both;

7.2.4 Issue, or to cause an appropriate Officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board for issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

7.2.5 Procure and maintain insurance as provided in the Declaration, and as the Board deems advisable;

7.2.6 Cause the Property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration;

7.2.7 Cause the restrictions created by the Declaration to be enforced; and

7.2.8 Take all actions deemed necessary or desirable to comply with all requirements of law and the Declaration.

7.3 Rules and Regulations. The Board may adopt and amend Rules and Regulations for the maintenance, use, conservation, and beautification of the Property and for the health, comfort, safety, and general welfare of Members and their families, tenants, and invitees. The Board, or any committee created by the Board, may impose fines on a Member who violates, or

whose family members or invitees violate the Rules and Regulations. The Board may establish a schedule of fines for particular violations of the Rules and Regulations to be paid by any Member who violates such Rules and Regulations as an Individual Assessment. Any fines assessed by the Board shall be due and payable within thirty (30) days after the mailing of the notice to the Owner by United States mail. In the event that a Member shall fail to pay when due any fines assessed by the Board under this Section, then the amount of the assessed fines, in addition to any and all expenses incurred by the Board in enforcing this Section, including reasonable attorneys' fees to the extent permitted by Utah law, may be collected by the Board through any lawful means, including foreclosure of the lien. The levying of a fine against a defaulting or delinquent Member shall not operate as a waiver of any other rights that the Board may have against such Member pursuant to the Declaration or these Bylaws and Code of Regulations. In the event such Rules and Regulations shall conflict with any provisions of the Declaration or these Bylaws and Code of Regulations, the provisions of the Declaration and of these Bylaws and Code of Regulations shall govern.

7.4 Annual Review. The Board may arrange annually for a certified public accountant to review the Association's books. The review shall be completed prior to each Annual Meeting of the Members. Upon written request, the Board shall provide a first mortgagee with a copy of any annual review report.

ARTICLE 8. **OFFICERS AND THEIR DUTIES**

8.1 Enumeration of Officers. The Association shall have a President, Vice-President, Secretary and Treasurer (collectively, the "Officers"). The Board may create other offices from time to time. Any two or more offices may be held by the same person, excepting the officers of President and Secretary. However, no Officer shall execute an instrument in more than one capacity if the signatures of two or more Officers are required by law, the Articles of Incorporation, the Declaration or these Bylaws and Code of Regulations. The President, Vice-President, Secretary and Treasurer shall be Members, or representatives of the Declarant.

8.2 Election of Officers. Prior to the Development Period Special Meeting, the Officers of the Association will be elected by the Board of Trustees at the Annual Organizational Board Meetings. Thereafter, the Officers of the Association will be elected by the Board of Trustees promptly after the Development Period Special Meeting and at each Annual Organizational Board Meeting and the persons so elected shall take office immediately upon election.

8.3 Term. The Officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year and until a successor is elected, unless he or she shall sooner resign, or shall be removed, or otherwise be disqualified to serve. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board for the unexpired portion of the term.

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

8.5 Resignation and Removal. The Board may remove any Officer at any time, with

or without cause, by a majority vote of the Trustees. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.6 Vacancies. A vacancy in any office may be filled by appointment of the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

8.7 Duties. The duties of the Officers are as follows:

8.7.1 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and all meetings of the Board and shall see that orders and resolutions of the Board are carried out. The President may sign all legal instruments authorized by and on behalf of the Association.

8.7.2 Vice-President. The Vice-President shall act in the place of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

8.7.3 Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the names and addresses of Members; give each Member a copy of any Rules and Regulations or amendments thereto; and shall perform such other duties as required by the Board.

8.7.4 Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; keep proper books of accounts, specifying the receipts and expenses, together with records showing the allocation, distribution, and collection of the common profits, losses, and expenses among and from the Members; and shall prepare an annual budget and annual statement of income and expenditures to be presented to the Members at the Annual Meeting, with a copy to be mailed or delivered to each Member.

8.8 Reliance on Professional Advice. As long as the Trustees and the Officers are acting in good faith, the Trustees and Officers may rely upon the advice of professionals hired or retained to advise the Association. It is understood that the Trustees and Officers will, likely as not, be unpaid volunteers and will have full-time employment elsewhere.

ARTICLE 9. **COMMITTEES**

The Board may appoint and disband such committees as it chooses.

ARTICLE 10. **INDEMNIFICATION PROVISIONS**

In addition to any other right or remedy to which the persons hereinafter described may

be entitled, under the Articles of Incorporation, Code of Regulations, Declaration, any other agreement, or by vote of the Members or otherwise, the Association shall indemnify any Trustee or Officer of the Association or former Trustee or Officer of the Association, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a Trustee or Officer of the Association, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except as to matters as to which the Trustee or Officer shall be finally adjudged in this action, suit or proceeding to be liable for willful misconduct or bad faith. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plead of nob contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase insurance in the amount it deems appropriate to provide this indemnification, and the cost of this insurance shall be a Common Expense. In the event of a settlement, indemnification shall be provided only in connection with those matters covered by the settlement as to which the Association is advised by counsel that the Trustee or Officer has not been guilty of willful misconduct or bad faith as a Trustee or Officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which a Trustee or Officer may be entitled. All liability, loss, damage, cost and expenses incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated by the Association as Common Expenses. Nothing in this Section shall be deemed to obligate the Association to indemnify any Member, who is or who has been a Trustee or Officer, with respect to any duties or obligations assumed or liabilities incurred by the Member as a Member rather than as a Trustee or Officer.

ARTICLE 11. **MISCELLANEOUS**

11.1 Notices. Unless otherwise provided in these By-laws and Code of Regulations, all notices, demands, bills, statements, or other communications under these By-laws and Code of Regulations shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by first class mail, postage prepaid:

11.1.1 if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if not such address has been designated, at the address of the residence of such Owner; or

11.1.2 if to the Association, the Board of Trustees, or the managing agent, at the principal office of the Association or the managing agent, it any, or at such other address as shall be designated by the Board with written notice to the Owners.

11.2 Service of Notices on Devises and Personal Representatives. Notice required to be given to any devisee or personal representative of a deceased Owner may be delivered either personally or by certified mail to such party at his, her or its address appearing on the records of the Court within the state of such deceased Owner is being administered.

11.3 Nondiscrimination. No Member (including the Declarant) and no employee, agent, or representative of a Member shall discriminate on the basis of sex, race, color, creed, or national origin in sale of any Lot, or in the use of the Common Elements.

11.4 Non-waiver of Covenants. No delay or failure on the part of the Board and/or on the part of any Officer in exercising any right, power or privilege or in failing to enforce a covenant, condition, obligation, or a provision contained in the Declaration, Articles of Incorporation, By-laws and Code of Regulations, or Rules and Regulations shall be or be deemed to be a waiver thereof, or be or be deemed to be a waiver of any subsequent exercise of such a right, power, or privilege, or be deemed to be a waiver of any subsequent violation or breach of such covenant, condition, obligation, or privilege, nor shall any single or partial exercise of any right, power, or privilege preclude any other or future exercise thereof or preclude the exercise of any other right, power, or privilege. All rights, powers, and privileges given hereunder or at law or in equity are cumulative, and any one or more or all of such rights, owners, and privileges may be exercised simultaneously or consecutively.

11.5 Board's Power to Bind. A lawful agreement or determination made by the Board or an Officer, in accordance with procedures established in the Declaration and Code of Regulations, shall bind all Members, their successors and their assigns.

11.6 No Act of Business for Profit. These Code of Regulations shall not be construed to give the Association authority to conduct any act of business for profit on behalf of one or more Members.

11.7 Books and Records. The books, records and papers of the Association shall at all time, during reasonable business hours, be subject to inspection by any Member. The Declaration, Articles of Incorporation, By-laws and Code of Regulations and Rules and Regulations, if any, shall be available for inspection by any Member at the principal office of the Association or at such other reasonable place as the Board might direct, where copies may be purchased at reasonable cost.

11.8 Fiscal Year. The fiscal year shall begin on the first day of January of every year, except that the first fiscal year of the Association shall begin at the date of incorporation. The commencement date of the fiscal year herein established may be changed by the Board of Trustees.

11.9 Execution of Corporation Documents. With the prior authorization of the Board of Trustees, all notes, contracts and other documents shall be executed on behalf of the Association by either the President or the Vice-President, and all checks and other drafts shall be executed on behalf of the Association by such Officers, agents or other persons as are, from time to time, by the Board, authorized so to do.

11.10 Conflict. In the case of any conflict between the Articles of Incorporation and these By-laws and Code of Regulations, the Articles of Incorporation shall control; and in the case of conflict between the Declaration and these By-laws and Code of Regulations, the Declaration shall control.

11.11 Amendments. These By-laws and Code of Regulations may be amended from time to time, at any Annual Meeting or special meeting of the Members in accordance with the

provisions set forth in the Declaration for amendment thereto. Notwithstanding the foregoing, the Declarant, or any person or entity whom the Declarant has designated, must consent in writing to the amendment before the amendment is effective if the amendment is passed during the Development Period.

11.12 Governing Law. These By-laws and Code of Regulations shall be interpreted and enforced under the laws of the State of Utah.

11.13 Perpetuities; Restraints on Alienation. If an option, privilege, covenant, or right created by these By-laws and Code of Regulations shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision; (b) rule restriction restraints on alienation; or (c) any other statutory or common law rule imposing time limits, then that provision shall continue only until twenty-one years after the death of the last survivor of the now living decedents of George W. Bush.

11.14 Severability. The invalidity of part or all of any provision of the Code of Regulations shall neither impair the validity of nor affect in any manner the Declaration, the Articles of Incorporation or the rest of these By-laws and Code of Regulations.

11.15 Heirs, Successors and Assigns. These Bylaws and Code of Regulations shall be binding upon and shall inure to the benefit of the Association, the Declarant, Members and the Declarant's and Members' heirs, successors, and assigns.

11.16 Interpretation. These By-laws and Code of Regulations shall be interpreted reasonably and in good faith. They should not be applied so strictly so as to thwart justice or common sense. Utah law shall control. If these Bylaws and Code of Regulations or the Articles of Incorporation are silent on a subject, the Trustees may follow the applicable corporation laws of Utah and shall have all powers given to a board of Trustees under the applicable corporation laws of Utah. These Section headings are for convenience only and shall not affect the meaning or construction of the By-laws and Code of Regulations. A reference to a specific Section without a further identification of the document containing that Section is a reference to a Section in the By-laws and Code of Regulations. Where the context requires masculine, feminine and/or neuter terminology shall include the neuter, feminine and/or masculine. Any capitalized terms used herein which are not otherwise defined, shall have the meanings as defined in the Declaration.

ADOPTED this 23RD day of MARCH, 2005.

HEARTHSTONE HOMEOWNERS'
ASSOCIATION, INC., a Utah non-profit
Corporation.

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Book - 9108 Pg - 4922-4949 A-M
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
MCMULLIN HOMES
1098 E SOUTH UNION AVE
MIDVALE UT 84047
BY: ZJM, DEPUTY - WI 28 P.
41

By: John C. Phillips
Name: John C. Phillips
Title: Vice President