

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
VILLA BONITA ESTATES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and executed this 1<sup>st</sup> day of February, 2005, by Summit Development Alliance, L.L.C., a Utah limited liability company (hereinafter referred to as "Declarant"). and KELLY HENSLEY (Owner of Lot 8).

**RECITALS**

A. Declarant is the record owner of that certain tract of real property located in the City of Santa Clara, County of Washington, State of Utah, and more particularly described in Article II of this Declaration.

B. Declarant has determined that for the efficient preservation of the values and amenities in the Project, for the maintenance of the Common Areas and Facilities, to create an entity which possesses the power to maintain and administer the Common Areas and Limited Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration, requires that this Declaration of Covenants, Conditions and Restrictions be organized and recorded. For such purposes, Declarant has also, in conjunction with the recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, the VILLA BONITA ESTATES HOMEOWNERS ASSOCIATION, INC.

C. Various improvements have been or will be made to the Property so as to enable its use as a subdivision containing certain Lots, Common Areas and Limited Common Areas. Declarant desires to provide for the preservation of the values and amenities in the said development and for the maintenance of the Common Areas and Limited Common Areas. To this end and for the benefit of the Property and the Owners thereof, Declarant desires to subject the Property and any property later annexed to the Project, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of the Property and each Owner thereof.

**NOW THEREFORE**, for the foregoing purposes, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth.

**ARTICLE I**  
**DEFINITIONS**

When used in this Declaration (including in that portion hereof entitled "Recitals"), the following terms shall have the meanings indicated:

1. Articles or Articles of Incorporation shall mean and refer to the instrument entitled "ARTICLES OF INCORPORATION OF VILLA BONITA ESTATES HOMEOWNERS ASSOCIATION, INC." which was filed for record in the office of the Utah Division of Corporations and Commercial Code on or about January 10, 2005.

2. Association shall mean and refer to the VILLA BONITA ESTATES HOMEOWNERS ASSOCIATION, INC., the Utah nonprofit corporation which is created by the filing of the Articles.

3. Board of Directors means and refers to the governing board of the Association.
4. Common Areas or Common Areas and Facilities shall mean and refer to all portions of the Property owned by the Association for the common use and enjoyment of the Owners, and shall include:
  - a. All Common Areas designated as such on the Plat.
  - b. All portions of the Property that are not specifically included within the individual Lots, that are not designated as Limited Common Areas on the Plat and that are not utilized by Owners as a driveway.
  - c. All installation, equipment, and improvements now or hereafter located on, over, or under the Common Areas and connected with or related to the furnishings of Project utility services such as water, sewage disposal, electricity, natural gas, and telephone, and which are not owned by or dedicated to a governmental or quasi-government authority or public or private utility company and which are not reserved by Declarant.
  - d. All buildings, structures and other improvements located on any of the Common Areas described in Sections 4(a), 4(b), or 4(c) above and owned or which will be owned, as set forth herein, by the Association.
5. Declarant shall mean and refer to Summit Development Alliance, L.L.C. and/or any successors to said limited liability company which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relationship to the Project.
6. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as the same may be modified, amended, supplemented, or expanded in accordance with law and the provisions hereof.
7. Limited Common Areas and Facilities or Limited Common Areas shall mean and refer to those portions of the Property owned by the Association, shown on the Plat as Limited Common Areas, designated to the exclusive use and enjoyment of the Owner of the Lot to which such Limited Common Area is adjacent and/or appurtenant and that portion of the Property that is used by an Owner as a driveway.
8. Living Unit shall mean and refer to a house, similar structure or portion of a structure located on a Lot which is designed and intended for human occupancy.
9. Lot shall mean and refer to any of the separately numbered and individually described parcels of land shown on the Plat and intended for private use and ownership, and specifically excepting the Common Area, the Limited Common Area, and areas dedicated to the use of the general public.
10. Member means and refers to every person or entity holding membership in the Association. Every Owner of a Lot, including the Declarant, shall be a Member of the Association. No evidence of membership in the Association shall be necessary other than evidence of ownership of a Lot. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains..
11. Mortgage shall mean a first mortgage or a first deed of trust on any Lot.
12. Mortgagee shall mean any person named as a first mortgagee under a first mortgage on any Lot or a beneficiary under or holder of a first deed of trust on any Lot.
13. Owner or Lot Owner shall mean and refer to the person or entity, whether one or more, who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

14. Plat shall mean and refer to the final plat for Villa Bonita Estates recorded with the Washington County Recorder's Office.

15. Project shall mean and refer to Villa Bonita Estates as shown on the Plat and governed by this Declaration.

16. Property shall mean and refer to the tract of real property described in Article II of this Declaration and any property later annexed to the Villa Bonita Estates.

17. Voting Power shall mean and refer to the combined total of the total number of votes appurtenant to Class A Members and the total number of votes appurtenant to the Class B Member. Whenever in this Declaration some act or decision requires a vote, approval or consent by the Voting Power, Association, Membership, Members, or Owners, one vote shall be appurtenant to each Lot owned by Class A Members and five votes shall be appurtenant to each Lot owned by the Class B Member, and each of said votes voted or cast shall be counted when determining whether the specified approval has been obtained. Although each of the multiple Owners of a single Lot shall be a Member, in no event shall more than one vote exist or be cast with respect to a single Lot. Which of the multiple Owners of a single Lot shall cast the vote appertaining to that Lot is determined under the Declaration. In any case in which this Declaration requires for authorization or approval of a transaction or matter the assent or affirmative vote of a stated percentage of the votes of the Association, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from every Member entitled to cast a vote.

## ARTICLE II PROPERTY DESCRIPTION

Declarant declares that all of the Property described below and any property later annexed to the Villa Bonita Estates shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, reservations, assessments, charges, and liens, and to the Plat. This is for the purpose of protecting the value and desirability of said Property. This Declaration and the Official Plat shall be construed as covenants of equitable servitude which shall run with the land and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

The Property which is initially to be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following-described real property situated in Washington County, State of Utah:

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

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

EXCLUDING all presently existing or to be constructed or installed utility lines and related facilities which are now or hereafter owned by any governmental or quasi-governmental authority or by any public or private utility company.

ALL OF THE FOREGOING IS ALSO SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all easements and rights-of-way of record, otherwise

existing, or enforceable in law or equity; and any easements, rights-of-way, encroachments, shortages, in area, or discrepancies shown on or revealed by the Plat or otherwise existing or discoverable from an inspection of the above-described parcel of real property.

RESERVING UNTO DECLARANT, such perpetual easements and rights of ingress and egress over, across, through, and under all portions of the above-described parcel of real property comprising Limited Common Areas and Common Areas (including, without limitations, Private Streets) and all portions of each Lot located either within twenty (20) feet of the front or the rear or within ten (10) feet of either side of such Lot as may be necessary or convenient for Declarant (in a reasonable manner not inconsistent with this Declaration) to construct and improve the Common Areas with such roads, structures, facilities, and other improvements (including recreational improvements and utilities) designed for the use and enjoyment of all the Members as Declarant may determine in its sole discretion to be appropriate. Declarant shall have the right to assign, convey and/or transfer all or any portion of the easements and rights herein reserved to Washington County, and other governmental or quasi-governmental body having jurisdiction over the Property, and any private or public utility company serving the Project.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through and under the above-described land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) To construct and complete the improvements as Declarant deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith; (ii) To improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant or as such assignee or successor may reasonably determine to be appropriate; (iii) To change the configuration of Lots that are still in the ownership of the Declarant upon filing an amended Plat, so long as said change or changes does not adversely affect the market value of any Lot or Lots previously sold by Declarant, and does not alter any Lot line by more than thirty (30) feet. Notwithstanding the foregoing, until December 31, 2015, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration or the Plat, or both, as the Declarant, in its absolute and sole discretion deems reasonable, necessary or desirable. If, pursuant to the foregoing reservations, the above described land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist.

THERE IS HEREBY CREATED an affirmative easement in favor of the Association, its employees and agents, upon, over and across each Lot to the perimeter boundaries of this Development for reasonable ingress, egress, installation, replacement, maintenance, and repair of the estate wall and fence located on the boundaries of the Development as shown on the Plat.

ARTICLE III  
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner of a Lot, including the Declarant, shall be a Member of the Association. No evidence of membership in the Association shall be necessary other than evidence of ownership of a Lot. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has

the necessary interest, and shall not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned, except that when more than one person or entity owns an interest in any Lot, the membership for such Lot shall be shared among the Owners of that particular Lot and the one vote appurtenant to such Lot shall be exercised as they jointly determine, but in no event shall more than one vote be cast with respect to any such Lot.

(b) Class B. The Class B Member shall be Declarant and shall be entitled to five (5) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (I) when all of the Lots owned in the Project by Declarant are sold; or
- (ii) on December 31, 2015.

Whenever in this Declaration some act or decision requires a vote, approval or consent by the Voting Power, Association, Membership, Members, Owner, or Lot Owners, one vote shall be appurtenant to each Lot owned by Class A Members and five votes shall be appurtenant to each Lot owned by the Class B Member, and each of said votes voted or cast shall be counted when determining whether the specified approval has been obtained. Although each of the multiple Owners of a single Lot shall be a Member, in no event shall more than one vote exist or be cast with respect to a single Lot. Which of the multiple Owners of a single Lot shall cast the vote appertaining to that Lot is determined under Section 3 of this Article III.

(c) Changes in Voting Procedure. If Declarant shall exercise its option to expand and add additional Lots, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, and Declarant may regain its Class B voting status for all Lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

(d) Limitation on Members' Votes. Electing members to the Board of Directors shall be subject to the reservation in this Article III, Section 8.

3. Multiple Ownership Interests. Except for Lots owned by Declarant, in the event there is more than one Owner of a particular Lot, the vote related to such Lot shall be shared among the Owners of that particular Lot, but in no event shall more than one vote be appurtenant to any such Lot. The one vote appurtenant to any such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

4. Lists of Owners and Eligible Mortgagees. The association shall maintain up-to-date records showing: (I) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him; and (ii) the name of each person or entity who is a Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity, where the Mortgagee notifies the Association of its name and address and requests notification of any matter affecting the Lot on which it has a lien.

5. Quorum Requirements. Unless specifically provided otherwise in this Declaration, the quorum required for any action authorized by this Declaration shall be as follows: at the first meeting duly called, the presence of Members, whether by proxy or in person, entitled to cast at least a majority of all the Voting Power of the Association shall constitute a quorum. If a quorum is not present at the first meeting or any adjournment thereof, another meeting may be called at which meeting a quorum shall be one-half (½) of the quorum which was required at

the immediately preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the immediately preceding meeting. Where more than one Owner owns a particular Lot, the various Owners of that particular Lot shall be counted as one for purposes of determining whether a quorum exists.

6. Governing Documents. The Association shall be governed by and shall carry on its activities and business in accordance with the provisions of this Declaration, and any amendments and supplements thereto, and the Articles of Incorporation and Bylaws of the Association.

7. Non-Liability of Board. In discharging its duties and responsibilities, the Board acts on behalf of and as a representative of the Owners, and no member of the Board shall be individually or personally liable for performance or failure of performance of his duties or responsibilities unless said member fails to act in good faith.

8. Appointment of Board of Directors. Declarant reserves the right to appoint the Board of Directors and to exercise all powers and responsibilities associated with the Board of Directors until December 31, 2015.

ARTICLE IV  
PROPERTY RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Each Owner shall have an equal, undivided, and nonexclusive right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas and Facilities. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described in this Section to any family member, household guest, tenant, lessee, contract purchaser, or the person who resides on such Owner's Lot. Without limiting the generality of the foregoing, any school bus or other vehicle servicing any public or private school system may use the streets for the purpose of transporting any occupant of any Living Unit. The Association shall have an easement over, across, under and through the Lots for the maintenance of the Lots, Living Units, and Common Areas and Facilities.

Easements for installation and maintenance of utilities, drainage facilities, and ingress and egress are reserved as set forth herein and as shown upon the recorded plat. No structure, planting, or other material shall be placed, or permitted to remain, within these easements which may damage or interfere with the installation and maintenance of utilities or which may change the direction of the flow of drainage channels in the easements or which may impede ingress and egress. The easements and all improvements thereon shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

2. Encroachments. If any portion of a Living Unit or improvement, or any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit, encroaches upon the Common areas or other Lots, as a result of shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

3. Form for Conveyancing. Any deed lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_, Villa Bonita Estates, as said Lot is identified in the Plat recorded in the office of the County Recorder in Washington County, Utah and in the "Declaration of Covenants, Conditions, and Restrictions of Villa Bonita Estates," recorded in the office of the County Recorder in Washington County, Utah, and amended and supplemented; TOGETHER WITH an equal undivided, and nonexclusive right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Plat and said Declaration of Covenants, Conditions and Restrictions, as both of said Plat and said

Declaration may have been amended or supplemented from time to time; also TOGETHER WITH an exclusive right and easement of use and enjoyment in and to the Limited Common Areas adjacent and appurtenant to said Lot; AND SUBJECT TO all covenants, conditions, restrictions, reservations in said Plat and Declaration of Covenants, Conditions and Restrictions as both of said Plat and said Declaration may have been amended or supplemented from time to time; all rights, rights-of-way, easements, obligations and liabilities and other matters of record or to which reference is made in the public record; rights of use, enjoyment and ingress and egress on, over, under, through and across the Lot as described and provided for in said Plat and Declaration of Covenants, Conditions and Restrictions, as both of said Plat and said Declaration may have been amended or supplemented from time to time.

Whether or not the description employed in any such instrument is in the above-specified form, however, this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. The right and easement of use and enjoyment to the Common Areas and Facilities and to the Limited Common Areas shall not be separated from the Lot to which they appertain and even though not specifically mentioned in the instrument of transfer, such rights and easements of use and enjoyment to the Common Areas and to the Limited Common Areas shall automatically accompany the transfer of the Lot to which they relate.

4. Transfer of Title. Declarant agrees that on or before December 31, 2007, it will convey by quit-claim deed to the Association good and marketable title to the common Areas, free and clear of all monetary liens and encumbrances except for (i) any state of facts an accurate survey may show, (ii) covenants, restrictions, easements, encumbrances and liens created by, pursuant to, or arising out of the performance of obligations of this Declaration, (iii) the lien of current general taxes and the lien of any current assessments, charges, or taxes imposed by governmental or quasi-governmental authorities; and (iv) easements and rights-of-way of record. Notwithstanding that the Declarant has not yet conveyed the common areas to the Association, the Association shall be treated as the owner of the common areas for purposes of paying all taxes, charges, fees, costs etc., associated with the common areas and ownership of the common areas.

5. Limitation on Easement. A Member's nonexclusive right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

- a. The right of the Association to suspend a Member's voting rights and right to use the Common Areas for any period during which an assessment of the Association pertaining to such Member's Lot remains unpaid, or for a period not exceeding ninety (90) days for any infraction of the provisions of this Declaration or of any rule or regulation promulgated by the Association;
- b. The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;
- c. The right of the Association (without the consent of Owner, Members, Mortgagees, or any other persons or entities) to grant permits, licenses, rights of way, and easements over, across, through, and under the common Areas to any governmental or quasi governmental authority, to any public or private utility company, or to any other person or entity for the purpose of installing, maintaining, or providing utilities and related facilities or roads or for such other purposes reasonably necessary or useful for the proper maintenance or operation of the Project and construction of additional Homes;
- d. The right of Washington County, Santa Clara City, and any other governmental or quasi governmental body having jurisdiction over the Property, and any private or public utility company

serving the Project to access, and rights of ingress and egress over, across, through, or under, the Common Areas for purposes of providing police and fire protection, transporting school children, and providing any other governmental, municipal, or utility service to the Project or the Additional Land;

e. The right of the Association, in accordance with its Articles and Bylaws and with the approval of a majority of the Voting Power present at any meeting called for such purpose, as explained by Article III, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property; the rights of any such mortgagee in said property to be subordinate to the rights of the Owners hereunder;

f. With the approval of all the holders of first mortgage liens on Lots, and Owner approval as provided below, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as agreed to by the Association. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication, sale or transfer shall be effective unless approved by a majority of the Voting Power present at any meeting called for such purpose, as explained by Article III. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all members at least ten (10) days but not more than fifty (50) days prior to the meeting date;

g. The right of the Association, with the approval of a majority of the Voting Power present at any meeting called for such purpose, as explained by Article III, to enter into agreements or leases which provide for use of the Common Area by a similar association in consideration for use of the Common Area and facilities of the other association, or for cash consideration;

h. The right of the Association to take such steps as is reasonably necessary or desirable to protect the Common Area against foreclosure;

i. The terms of this Declaration;

j. The right of the Association to make, publish and enforce rules and regulations pertaining to the use of all Common Area and facilities by Owners, guests, invitees and tenants of Owners; and

k. The right of Santa Clara City to levy taxes and issue bonds.

6. Access to Lots. Each Owner's nonexclusive right and easement of use and enjoyment in and to the Common Areas shall include (without limitation) the right of ingress and egress to such Owner's Lot, which right shall be irrevocable, perpetual, and appurtenant to such Lot.

#### ARTICLE V ASSESSMENTS

1. Personal Obligation and Lien for Assessments. Each Owner shall, by acquiring or becoming vested with an interest in a Lot, be deemed to covenant and agree to pay to the Association the annual and the regular, special and additional assessments described in this Article, together with the hereinafter provided for interest, attorneys' fees, and costs of collection. All such amounts shall be, constitute, and remain: (i) a charge and continuing lien upon the Lot with respect to which such assessment is made; and(ii) the personal obligation of each person who is an Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by any means including, but not limited to, waiver of his rights concerning



the Common Areas or by abandonment of his lot.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of maintaining, repairing and securing the Common Areas and promoting the recreation, health, safety, and welfare, of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas and Limited Common Areas; assessments to the Association for the use of any pool, spa, clubhouse, and/or other recreational facilities which the Association may contract with other third parties to use; legal, accounting, and other professional and service fees; maintenance, repair, operation, management and supervision of the Common Areas and Facilities and Limited Common Areas; major repair or replacement of improvements within the Common Areas and Facilities and Limited Common Areas, and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or the Articles of Incorporation. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Areas and Facilities and Limited Common Areas. Notwithstanding the foregoing, the responsibility for maintenance and repair for Limited Common Areas shall be the Lot Owners entitled to the exclusive use of the Limited Common Area adjacent and appurtenant to that Owner's Lot.

3. Regular Assessments. The Board of Directors of the Association may from time to time and in its discretion set the amount of regular monthly assessments at such sum as may be necessary to pay the ordinary and reasonable expenses of the Association as allowed and permitted by this Declaration. The Board of Directors shall be free to determine whether the monthly assessments will be collected on an annual or monthly basis. The Association may estimate the amount of funds necessary to perform its functions as described herein, and may establish its assessments based on such estimates so as to allow the collection of assessments for the payment of expenses when incurred and due, with an annual accounting and reconciliation of funds assessed, collected, and expended.

4. Special Assessments. From and after the date set for commencement of monthly assessments under Section 7 of this Article V, the Association may levy special assessments for the purpose of defraying, in whole or in part: (I) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (ii) the cost of any construction, reconstruction, repair, or replacement of an improvement, building, structure, personal property, or fixture upon the Common Areas. Any such special assessment must be approved by a majority of the Voting Power present at any meeting called for such purpose, as explained by Article III. Votes may be cast in person or represented by proxy at a meeting duly called for such purpose. Written notice setting forth the purpose, date, time, and place of the meeting shall be sent to all Members at least ten (10) days but not more than fifty (50) days prior to the meeting date.

5. Quorum Requirements. The quorum required for any action authorized by Section 4 of this Article V shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast at least a majority of all the Voting Power of the Association, as explained by Article III, shall constitute a quorum. If a quorum is not present at the first meeting or any adjournment thereof, another meeting may be called (subject to the notice requirements set forth in Section 4 above) at which meeting a quorum shall be one-half ( $\frac{1}{2}$ ) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the immediately preceding meeting.

6. Rate of Assessment. The monthly assessment for each Lot shall be determined by the Board of Directors setting an annual base assessment. Although the regular assessment may be identified as a "monthly" assessment, the Board of Directors is free to combine the monthly assessments into an annual assessment and require the combined total to be paid once a year rather than each month.

The Board of Directors shall fix the base annual assessment at an amount not in excess of the maximum allowed.

- a. The regular monthly assessment shall be no greater than \$200.00 per Lot, until the sooner to occur of (I) three (3) months from the date this Declaration is recorded with the Washington

County Recorder, or (ii) the date on which Declarant, its successors and assigns as to the development of the Project, has transferred to Lot purchasers 70% of the Lots within Villa Bonita Estates (the "Turnover Date"). The foregoing does not preclude a special assessment prior to the Turnover Date.

b. After the occurrence of the Turnover Date as described in Article V, Section 6(a) above, both monthly and special assessments shall be fixed at a uniform and equal rate for all Lots, regardless of Lot size, at a rate necessary to pay the expenses of the Project as described in Article V, Section 2 above.

c. With respect to the assessments described in this Article, as soon as the Lot has been conveyed to a buyer by Declarant, the Owner of the Lot shall be responsible for all assessments. Notwithstanding anything herein to the contrary, it is the intent of this Declaration that an equal assessment be applied with respect to each Living Unit regardless of the number of Lots on which a Living Unit may be located. Therefore, in the event an Owner purchases more than one Lot, and the Lots are contiguous, and the Owner builds only one Living Unit on said Lots, then said Owner may execute and record against all involved Lots a Declaration of Use, in form acceptable to the Association, declaring and restricting the use of said Lots for only one Living Unit, and from the time of Recording such Declaration of Use, the Association shall assess and treat the Lots set forth in said Declaration of Use as being one Lot for purposes of assessments in this Declaration. The Association shall be the beneficiary of and the party entitled to enforce the covenants and restrictions of said Declaration of Use, and said Declaration of Use shall not be terminated and canceled without the written consent of the Association.

7. Monthly Assessment Due Dates. The assessments provided for herein shall commence to accrue on the first day of the month following conveyance to an Owner. The first assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Board of Directors as to the amount of said assessment, the assessment shall be an amount equal to ninety percent (90%) of the maximum assessment provided above.

The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates for payment of said assessment shall be established by the Board of Directors.

8. Certificate Regarding Payment. Upon the request of any Owner, prospective purchaser, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons (other than the Owner of the Lot concerned) who in good faith and for value rely thereon. A reasonable charge may be made by the Board for the issuance of these certificates.

9. Effect of Nonpayment – Remedies. Regardless of the terms of any agreement to the contrary, the liability of the Owners of a Lot for the Payment of any assessment relating to such Lot shall be joint and several, and any remedy for the collection of such assessment may be enforced against any or all Owners of the Lot concerned; provided, however, that the personal obligation of an Owner to pay assessments shall not pass to his successors in title unless assumed by them. If any assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of the delinquency at the rate of twenty-one percent (21%) per annum (or, in the event such rate at any time exceeds the maximum legal limit, interest shall accrue at such maximum legal rate), or at such lesser rate of interest as the Board of Directors may establish from time to time, and the Association may bring an action against any or all Owners who are personally liable therefore and/or to foreclose the lien against the Lot; provided however, that the Association shall give the Owner(s) concerned twenty (20) days advance written notice of its intent to pursue one or more of its remedies hereunder. Any relief obtained

by the Association (whether or not through judicial action) shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights. After institution of a foreclosure action by the Association against any Lot, the Association shall, without regard to the value of such Lot or the extent of the Owner's equity therein, be entitled to the appointment of a receiver to collect any income or rentals which may be produced by such Lot.

10. Right to Bring Action. Each Owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association, its successors, assigns or agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners, shall have the power to bid on an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same

11. Tax Collection from Lot owners by Washington County Authorized. It is recognized that under the Declaration the Association will hold fee title to the Common Areas, which Common Areas shall be conveyed by Declarant to the Association free and clear of all liens or encumbrances, and the Association will be obligated to pay property taxes on said Common areas to Washington County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of this monthly common assessment will be required to pay to the Association his pro rata share of such taxes. Notwithstanding anything to the contrary contained in the Declaration, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed so to do. In the event that the assessor shall separately assess common Areas to the Association, the Board of Directors may require, in its discretion, a special assessment to pay such taxes, or they may be included in the regular assessment budget.

12. Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to the streets or other common or limited common areas from the activities of the City of Santa Clara in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

13. Exempt Property. Notwithstanding any assessment obligation otherwise described in this Article, assessments shall not be charged against any Lot owned by Declarant and Declarant shall not be responsible for nor required to pay any assessment (annual, special, additional or otherwise) unless a Living Unit owned by Declarant is constructed on a Lot and is occupied as a residence. This shall also apply to Declarant's successor in interest in the development of the Project. The following property subject to this Declaration shall also be exempt from the assessments created herein (I) all properties dedicated to and accepted by any local public authority; and (ii) the Common Area and Limited Common Area.

## ARTICLE VI OPERATION AND MAINTENANCE

1. Maintenance by Owners. Each Lot and Living Unit and Limited Common Area adjacent and appurtenant to an Owner's Lot shall be maintained by the Owner thereof in a clean and orderly condition and in such condition as does not detract from the appearance of the Property and as does not affect adversely the value or use of any other Lot, Living Unit, or the Common and Limited Common Areas. The Association shall have no obligation

regarding maintenance or care which is required to be accomplished by the Owners. Each Owner, and not the Association, shall be responsible to pay for utility services (including, without limitation, both hookup and installation fees and periodic charges) related to the Owner's Lot and the appurtenant Limited Common Area and which are separately charged, billed, and/or metered to his Lot by government or quasi-governmental authorities or by public or private utility companies. In addition, each Owner shall pay the Association reasonable hookup and use fees for utility services if any are provided to his Lot by the Association.

Any damage inflicted on existing subdivision improvements such as curbs, gutters, streets, or concrete sidewalks, by the Owner, his contractor, subcontractor and/or his agents must be repaired forthwith after such damage is discovered, and the expense of such repair shall be the responsibility of the Owner.

2. Operation and maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas and Facilities (including, without limitation, utility lines or facilities owned or used by the Association) as may be reasonably necessary or desirable to make them appropriately usable in conjunction with the Lots and Living Units and to keep them clean, functional, attractive, and generally in good condition and repair. Included in such obligation to maintain and operate the Common Areas are the obligation to provide or cause to be provided, where necessary, garbage collection services, to maintain street and other signs and lights located on the Common Areas, and to provide re-vegetation of the Common Areas. The Association shall have the absolute right and authority to regulate the reasonable use, operations, maintenance and repair of the Common Areas and all facilities, structures, and improvements located on the Common Areas, including without limitation, any and all park areas, clubhouse facilities and other recreational facilities and amenities. The Association, through its Board of Directors, shall promulgate, publish and distribute such written rules and regulations (the "Rules and Regulations") governing the use of the Common Areas and Facilities, including by way of illustration such matters as the hours recreational facilities may be used by the Owners, their guests and invitees. The Board of Directors of the Association may amend and modify these Rules and Regulations in accordance with its regular meeting and voting procedures and the requirements as set forth in the Articles of Incorporation, Bylaws and this Declaration.

3. Professional Management. The Association may carry out through a professional manager those of its functions which are properly the subject of delegation. The professional manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

4. Association Access to Lots. The Association shall have an irrevocable right of access to each Lot and Limited Common Areas to make emergency repairs and to do other work reasonably necessary or useful for the proper maintenance or operation of the Project.

## ARTICLE VII USE AND BUILDING RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions contained herein and in the Rules and Regulations. No automobile or other vehicle shall be parked at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from its various parts.

2. Use of Lots and Living Units. All Lots and Living Units are restricted to use as single-family residential housing; provided, however, that a portion of a Living Unit may be used to conduct a business or a profession if: (1) such use is approved by all appropriate governmental and quasi-governmental bodies having jurisdiction over such matter; (2) such use is approved by the Architectural Control Committee (as said Committee is provided for hereafter); and (3) such use is of a type traditionally conducted in a single-family residence. Under no circumstances shall a Living Unit be used for other than a single family residence, except as otherwise provided in this

Declaration. No Lot or Living Unit shall be used, occupied, or altered in violation of the law, or so as to detract from the appearance or value of any other Lot, Living Unit, or the Common Areas, or so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas or Limited Common Areas. No aluminum foil, newspapers, or any other similar materials may be used to cover the windows in any Living Unit or other structure. A Lot, or any part thereof, may not be used as a road or thoroughfare to gain access, ingress, or egress to any other property, except where an Owner owns two or more contiguous Lots and is constructing only one Living Unit on the combined Lots.

No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling, a private garage, a guest house, and outbuildings for pets as hereinafter described.

3. Vehicles. Boats, trailers, campers, recreational vehicles and similar vehicles owned by the Owner and any residents of the Lot shall be parked only within the Lot of the Owner concerned. When parked within a Lot, such vehicles shall be kept in an enclosed garage or behind a fence. All vehicles of Owner remaining overnight may be parked on the Lot and not on the streets of the Project. All such vehicles must be parked in the garage, driveway or behind fencing behind the front setback. All vehicles of guests or invitees to a Lot remaining overnight may be parked on the Lot and on the streets of the Project. No vehicle may be parked on the street within the subdivision for more than three consecutive days. No inoperable motor vehicle shall be parked on any lot or on the streets of the Project except within the enclosed garage of the Lot.

4. Animals. No animals other than small pets (dogs, cats, etc.) shall be kept or allowed on any Lot and appurtenant Limited Common Area. No more than two commonly domesticated household pets may be kept on a Lot and appurtenant Limited Common Area. Such animals as are permitted are not allowed to run free away from its Owner's Lot and appurtenant Limited Common Area. Animals may not leave the Owner's Lot and appurtenant Limited Common Area except on a leash and under the control of a responsible person. Animals are not to be permitted to go on to any other Lot, Common Areas, Limited Common Areas, or recreation area. Animals are not permitted to create a nuisance or to disturb the peace of any other Lot Owner or resident. No animals of any kind shall be raised, bred or kept for any commercial purpose. The Association may include in the Rules and Regulations reasonable rules concerning the use of, or damages to, Common and Limited Common Areas by animals and the liability of individual Owners for such damage.

5. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or to operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property or to the occupants thereof.

6. Unsightly Articles. No unsightly articles shall be permitted to remain on a Lot and appurtenant Limited Common Area so as to be visible from any other Lot, streets, or the Common and Limited Common Areas. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container, and any such container shall be kept within an enclosed structure or appropriately screened from view. No metals, bulk materials, scrap, refuse, or trash shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure or when appropriately screened from view.

7. Signs. No signs of any kind shall be displayed to the public view without the approval of the Architectural Control Committee, except such signs as may be erected by the Declarant for permanent identification of the Project or used by the Declarant in connection with the development and sale of Lots, and except such signs of customary and reasonable dimensions as may be displayed on a Lot advertising a Lot or Living Unit for sale or lease. Display of any "for Lease" sign more than two (2) feet by one and one-half (1 ½) feet shall require the prior written approval of the Architectural Control Committee. A residential identification sign for a Lot is permitted but should not exceed two (2) square feet in surface area.

8. No Hazardous Activities. No activities shall be conducted on the Property and no improvement

shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue or fire pit unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

9. Motorbikes. All motorcycles, trail bikes, three-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only by individuals with driver's licenses and only on established streets and parking areas and are specifically prohibited from all other portions of the Common and Limited Common Areas, and are to be used on said streets only for ingress, egress, access purposes and not for recreational purposes anywhere within the Project.

10. Weed Control. Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and other flammable materials on his Lot and appurtenant Limited Common Area so as to minimize fire and other hazards to surrounding Lots, Living Units, the Common and Limited Common Areas, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants which are injurious to crops, livestock, land, or the public health.

11. Temporary and Other Structures. Except for such trailers as may be allowed during construction pursuant to the Design Guidelines, structures of a temporary nature, trailers, basement houses, mobile homes, modular homes, prefabricated housing, tents, or shacks shall not be used at any time as a residence, either temporarily or permanently, nor shall said structures be permitted on the Property at any time. No old or secondhand structures shall be moved onto any Lot, it being the intention hereof that all Living Units and other buildings erected on Lots or within the Property shall be new, permanent, on-site construction of good quality workmanship and materials.

12. Drainage. No Owner may interfere with the established drainage pattern over any part of the Project unless adequate provision is made for proper drainage and is approved in advance by the Architectural Control Committee. Established drainage shall mean and refer to the drainage which exists at the time the overall grading and development of the Project by Declarant is completed or which is shown on any plans of Declarant or plans approved by the Architectural Control Committee and/or Washington County and/or Santa Clara City.

13. Stoves and Fireplaces. No wood or coal burning stoves, but only natural gas stoves, shall be allowed in any Living Unit. Wood, coal or natural gas burning fireplaces are acceptable.

14. Native Materials. Trees, plants, rocks and other material native to the area of the Project shall not be removed from any Lot except as may be deemed necessary by the Architectural Control Committee for the construction of a Living Unit, other authorized structure, or necessary site development and landscaping, all in conformity with the Design Guideline, as hereinafter defined.

15. Storage Tanks and Utility Lines. All fuel tanks, water tanks, or similar storage facilities shall either be constructed as an integral part of a Living Unit or shall be installed or constructed underground. All utility services, including but not limited to, phone lines, power lines, and water and sewer lines shall be located underground.

16. No Further Subdividing. No Lot may be further subdivided.

17. Exception for Declarant. Notwithstanding the restrictions contained in these Articles, until the Declarant has sold all of the Lots, Declarant shall have the right to use any Lot or Living Unit owned by Declarant, and any part of the Common Areas and Limited Common Areas (including facilities or rooms in any clubhouse or other structure constructed on the Common Areas that are constructed for such intended use) reasonably necessary or appropriate, in furtherance of the construction of the Project or in furtherance of any marketing or sales effort relating to the Lots owned by Declarant.

18. Construction of Living Unit. Each Living Unit constructed on a Lot must be constructed pursuant to a contract with Declarant or Declarant's assignee, as directed by Declarant. Each Lot Owner must contract directly with Declarant or Declarant's assignee, as directed by Declarant, for the Declarant to arrange for the construction of the Living Unit. A Lot Owner may contract with another person or entity for the construction of the Living Unit only after obtaining prior written consent from the Declarant.

ARTICLE VIII  
ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Directors of the Association shall appoint a three (3) member committee (hereinafter sometimes referred to as "ACC"). Declarant shall have the right to appoint members of the ACC until the happening of either of the following events, whichever occurs earlier: (I) December 31, 2015; or (ii) within one hundred twenty (120) days after eighty percent (80%) of the Lots owned by Declarant in the Project are sold (the "Termination Date"). The function of the ACC shall be to insure that all Living Units and other improvements within the Lots harmonize with existing surroundings and structures and comply with the requirements set forth in these Articles, and the requirements set forth in that certain document entitled "Design Guidelines for Villa Bonita Estates" (the "Design Guidelines"). The Design Guidelines have been or will be established and developed by the Declarant as part of the development and formation of the Project, and from the date of the Declaration the Committee shall have the responsibility and obligation to administer said Design Guidelines on behalf of and for the benefit of the Association and all of the Owners in the Project. The Committee shall have the right to amend the Design Guidelines from time to time as they may deem reasonably appropriate. Any amendment to the Design Guidelines shall be approved by the Board of Directors (the "Board") of the Association. In addition, the Board shall have the right to amend the Design Guidelines without the recommendation or approval of the Committee. Further, the Committee shall have the right to grant variances or exceptions to the Design Guidelines with respect to individual Owners, where to enforce the Design Guidelines as written would impose an unreasonable and unnecessary hardship on the Owner, and provided the variance granted does not substantially or materially deter from the Project and the ambiance and character of the Project as contemplated by the Design Guidelines and this Declaration. Any decision of the Committee with respect to a variance or exception maybe appealed to the Board, and the Board may override the decision of the Committee. An individual may be a member of both the Committee and the Board. The Committee need not be composed of Owners. If such a Committee is not so appointed, the Board itself shall perform the duties required of, and shall constitute the Committee. Each member of the Committee shall serve until he or she resigns or until Declarant or the Board, as appropriate, replaces him or her with a new member.

2. Standards for Approval. In deciding whether to approve or disapprove plans and specifications, or any other matter, submitted to it, the Committee shall use its best judgment to insure that all improvements and construction on Lots within the Property conform to and harmonize with existing surroundings and structures and comply with the requirements of these Articles, and the Design Guidelines.

3. Submission to Committee. No Living Unit, accessory or addition to a Home, structure, fence, shall be constructed, maintained, or accomplished, and no grading or removal of natural vegetation, landscaping, or other improvement of a Lot shall occur, and no alteration, repainting or refurbishing of the exterior of any Living Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the ACC. The ACC may require that such plans and specifications be submitted for its review as it deems necessary, including but not limited to: floor plans, site plans, drainage plans, elevation drawings, landscape drawings, and descriptions or samples of exterior materials and colors. For any construction requiring a building permit, approval must be obtained from the ACC before plans are submitted to Santa Clara City for the approval of said building permit.

4. Disclaimer of Liability. Neither the ACC nor any member thereof acting in good faith shall be liable to the Association or any Owner for any damage, loss, or prejudice suffered or claimed on account of:

- a. The approval or rejection of, or the failure to approve or reject, any plans, drawings or

specifications;

- b. The development or manner of development of any of the Property; or
- c. Any engineering or other defect in approved plans and specifications.

5. Non-Waiver. The approval of the ACC of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the ACC to disapprove any similar plans and specifications subsequently submitted.

6. Exception for Declarant. The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common or Limited Common Area and which occurs at any time during the seven (7) year period following the date on which this Declaration is filed of record in the Office of the County Recorder of Washington County, State of Utah. Declarant shall further have the right to designate the location and design of any Common Area amenities, provided that Declarant shall not be required to provide any such amenities by virtue of this Section.

7. Meetings. The Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members of the Committee shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by the Declaration or the Design Guidelines. The Committee shall keep and maintain a record of all actions from time to time taken by the Committee at such meetings.

8. Compensation. Unless authorized by the Board, the members of the Committee shall not receive any compensation for services rendered. Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Committee function or duty. Professional consultants retained by the Committee shall be paid such compensation as the Committee determines.

9. Amendment of Design Guidelines. The Committee may, from time to time and in its sole discretion, promulgate, adopt, amend, and repeal by unanimous vote amendments to the Design Guidelines, which, among other things, interpret, supplement, implement or delete other provisions of the Design Guidelines. All such amendments by the Committee shall be approved by the majority vote of the Board of Directors. In addition, the Board of Directors may, from time to time and of its own volition without request, recommendation or approval of the Committee, promulgate, adopt amend and repeal, by majority vote of all members of the Board, amendments to the Design Guidelines. All such amendments, as they may from time to time be adopted, shall be appended to and made a part of the Design Guidelines and shall thereupon have the same force and effect as if they were set forth in and were a part of the Design Guidelines. Each Owner is responsible for obtaining from the Committee a copy of the most recently revised Design Guidelines.

10. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after compliance with the requirements of Subsections (a) through (d) of this Section. In the event the committee fails to take any action (which action may include notice of reasonable extension of time for the committee to complete its review) within such period, it shall be deemed to have approved the material submitted. Approval is conditioned upon compliance with the following procedures:

- a. the Owner concerned signing a notice indicating that he has read and understood this Declaration and the Design Guidelines;
- b. the Owner concerned depositing with the Committee a Three Hundred and Fifty Dollars (\$350.00) security deposit to insure compliance with the provisions of this Declaration. Two Hundred Dollars (\$200.00) of such deposit shall be refundable if all provisions of this Declaration are complied with through the completion of the Living Unit or other structure or building concerned. One Hundred and Fifty Dollars (\$150.00) of said deposit shall be retained by the Committee to reimburse it for plan approval costs. The amount of said security deposit and the amount to be retained by the Committee may be increased by the Board of Directors of the Association without a vote of the Members and without amending this Declaration, as may be



reasonable in light of the cost of the Committee performing its duties;

c. The Owner concerned submitting such site layout plans, architectural plans, landscaping plans and other plans and materials as required by the Design Guidelines;

d. Any subsequent changes, improvements, or alterations in such plans must be submitted to the Committee for written approval.

11. **Living Unit Restrictions.** The types and colors of materials used in the construction of a Living Unit, including without limitation the roofing material, siding material and windows, the landscaping, the minimum and maximum floor areas of Living Units, the minimum and maximum floor areas and sizes of garages, the height of Living Units, the location on a Lot of a Living Unit, and the type and location of fences, shall all be governed by and shall meet the requirements set forth in the Design Guidelines. The foregoing shall also be subject to the following, unless otherwise revised by the Design Guidelines:

**Location of Structures.** The location of any structure must be within the boundaries of the building pad of the Lot.

**Building Type.** Each Lot shall contain no more than one detached single family dwelling not to exceed two and ½ stories in height above ground with an enclosed private garage. Basements may require flood insurance and are not recommended. One additional outbuilding may be constructed of materials with a finish matching the primary dwelling structure.

**Minimum Square Footage.** No single unit shall have less than three thousand (3,000) square feet of living area on the main level for a one story dwelling exclusive of porches, balconies, patios and garages; nor less than twenty-five hundred (2,500) square feet of living areas, exclusive of porches, balconies, patios and garages on the main level for a dwelling of two stories above ground.

**Building Materials.** In order to promote a harmonious community development and protect the character of the neighborhood, all homes must be constructed onsite. Pre-fabricated, modular, manufactured or mobile homes are not allowed.

**Exterior Finish Materials.** The exterior walls of all structures on a Lot are preferred to be made of stucco type materials, using earth tone colors (for purposes herein, gray and white are not considered earth tone colors). Brick, stone, and tile may also be used.

**Roof and Roofing Materials.** All structures on a Lot shall be required to use tile roofing of earth tone colors, complementary to the color of the structure.

**Unused Building Materials.** Once a dwelling is occupied or made available for sale, all unused building materials and debris shall be removed from the Lot or stored inside.

**Fences/walls.** Fencing/walls, if constructed, shall be approved by the Architectural Control Committee (ACC). Fencing/walls between the front setback and the side or rear yards must be obscure and must be masonry or stucco. Rear fencing/walls must be obscure and must be masonry, stucco, or wrought iron—the precise material must be approved by the ACC.

**Exterior Lighting.** Exterior lighting should be directed away from adjacent residences and away from the vision of passing motorists.

**Antenna.** Antennas or satellite dishes must be placed on the back or side of the house so as not to be obtrusive from the street.

**Heating & Air Conditioning.** Roof mounted heating, ventilating and air conditioning (HVAC) systems or evaporative coolers are not allowed. HVAC or evaporative coolers visible from the street are not allowed.

**Driveways.** All driveways shall be constructed of Portland Cement Concrete.

**Landscaping. (A.)** Prior to the occupancy of the home, the Owner of such Lot shall have completed the minimum lot landscaping, which shall consist of one tree in the front setback area, and exclusive of the driveway and sidewalk one-hundred percent (100%) of the remaining area in front of the setback line is to be planted. A conceptual landscaping plan must be submitted to the ACC with the building plan. Actual landscaping must be approved by the ACC. In the event an Owner occupies the home prior to completing the required landscaping, the Association may impose a \$500.00 fine against the Owner which shall be paid immediately upon demand. Such fine shall constitute a lien on said Lot in similar nature to an assessment, shall be the personal obligation of the Owner of the Lot, and shall be enforceable at law. In the event it is necessary to take action to collect the fine, the Owner of the Lot shall be charged with the expenses, fees and costs, including attorneys' fees, incurred by the Association or Architectural

Control Committee. Such expenses, fees and costs shall constitute a lien on said Lot, in similar nature to an assessment, shall be the personal obligation of the Owner of the Lot, and shall be enforceable at law. In the event that the Owner fails to install the required landscaping within 30 days after written notice from the Association or ACC, the ACC and the Association shall have the authority to install the required landscaping and charge the Owner thereof the incurred expenses, fees and costs, including attorneys' fees, if applicable. Such expenses, fees and costs shall constitute a lien on said Lot in similar nature to an assessment, shall be the personal obligation of the Owner of the Lot, and shall be enforceable at law. (B.) Landscaping must be maintained to a high standard. Noxious plants as defined by the Washington County Weed Control Board must be controlled, and the Owner of each Lot is responsible for removing them from their Lot. In the event an Owner fails to maintain his/her Lot, he/she will be notified by the Architectural Control Committee, or the Homeowners Association, via certified mail, of the requirement to remedy the failure within 21 days. After the 21 days, the Architectural Control Committee, and the Homeowners Association shall have the authority to maintain the landscape or remove the noxious plants and charge the Owner thereof the incurred expenses, fees and costs, including attorneys' fees, if applicable. Such expenses, fees and costs shall constitute a lien on said Lot in similar nature to an assessment, shall be the personal obligation of the Owner of the Lot, and shall be enforceable at law.

12. Living Unit Construction. Construction of a Living Unit shall be completed within one (1) year of the time such construction is commenced.

13. No Exceptions for Declarant. Declarant shall not be exempt from the provisions, restrictions, and requirements of this Article.

14. No Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant to this Article VIII.

15. Governmental Approval. No Living Unit, accessory or addition to a Living Unit, other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns shall occur on a Lot until any required permit or required approval therefor is obtained from the City of Santa Clara or Washington County, as appropriate (or any successor municipality) following submission to the appropriate governmental entity of such information as it may reasonably require. The granting of a permit or approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the Committee to refuse to approve any such matter.

16. Option Right of Declarant. In the event an Owner of a Lot does not commence construction of a Living Unit thereon within two years from the date the Lot was first conveyed by Declarant, whether to the present Owner or to another Owner, then the Declarant shall have an option to repurchase the Lot from the present Owner for a purchase price equal to the purchase price paid by the Owner to whom the Declarant first conveyed the Lot or a purchase price equal to the purchase price paid by the present Owner, whichever is less. The Declarant may exercise this option by giving written notice to the present Owner at any time after termination of said two year period and before the Owner commences construction of a Living Unit, and closing shall occur within thirty days after such notice is given. The Declarant shall have the right to specifically enforce this provision in court in the event the Owner refuses to honor the option herein granted. Upon any such purchase, the Declarant shall immediately make all normal and reasonable efforts to resell the Lot, subject to the same restriction as set forth herein for the original sale of a Lot by the Declarant.

17. Lease. Any lease or rental agreement for any Living Unit shall be in writing and specifically subject to the provisions, restrictions, and requirements of this Declaration, the Design Guidelines, the Plat, and the Articles.

18. Indemnity. Every Owner, by taking title to a Lot, shall be deemed (a) to have released and forever discharged, and to have agreed to indemnify and hold harmless, the Association and the Declarant from any and all claims, demands, losses, damages, injuries or causes of action, which are in any way connected with or result from the Limited Common Area adjacent and appurtenant to the Owner's Lot, including any such claims, demands, or causes of

actions which allege negligent acts or omissions of the Association or the Declarant; (b) to have released the Association and the Declarant from any duty that either may have concerning the Limited Common Area; and (c) to have agreed to indemnify and hold harmless the Association and the Declarant from any and all claims or causes of action which are asserted by or on behalf of anyone with respect to any matters similar to those from which the Owner has released and indemnified the Association and the Declarant pursuant to the previous provisions of clauses (a) and (b) of this Section. The releases and indemnifications contained in this Section shall include an indemnification in favor of the Association and the Declarant from any and all attorneys' fees and costs incurred by either of them in enforcing their rights under the provisions of this Article.

ARTICLE IX  
ASSOCIATION INSURANCE

1. Hazard Insurance. The Association shall at all times maintain in force, and pay the premiums for, hazard insurance meeting the following requirements.

a. a policy of property insurance shall be maintained covering all of the Common and Limited Common Areas and Facilities (except land, foundation, excavation, and other items normally excluded from coverage) including fixtures and building service equipment, to the extent they are part of the Common and Limited Common Areas, as well as common personal property and supplies owned by the Association. As a minimum, such policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage enforcement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and the use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of the Common areas of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. Such policy shall contain such deductible amount as the Board of Directors shall determine from time to time. Funds to cover the deductible amount may be included in the reserve fund required to be maintained by the Association pursuant to Section 2 of Article V of this Declaration.

b. The name of the insured under each policy required to be maintained by the foregoing Subsection (a) shall be set forth therein substantially as follows: "Villa Bonita Estates Homeowners Association, Inc., a Utah nonprofit corporation." evidence of insurance shall be issued to an Owner or Mortgagee upon reasonable request.

c. Each policy required to be maintained by the foregoing Subsection (a) shall contain a provision providing that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

2. Fidelity Bonds. The Association shall maintain in force and pay the premiums for blanket fidelity bonds for all officers, director, members, employees of the Association and for all other persons, including volunteers, handling or responsible for funds of or administered by the Associations. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds may be, at the Association's election, required for management agent's officers, director, employees, and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon best business judgment. Any bonds required shall meet the following requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons service without compensation from the definition of "employees," or similar terms or expressions; (3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by management agent for its officers, directors, employees, and agents) shall be paid by the Association as a common expense; and (4) the bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written

notice to the Association.

3. Liability Insurance. The Association shall maintain in force and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas and Facilities and Limited Common Areas, public ways in the Project, if any, and commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts deemed appropriate by the Board of Directors. Nevertheless, such coverage shall not be less than One Million Dollars(\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence with a maximum of Two Million Dollars(\$2,000,000.00) per year. Coverage under such policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation maintenance, or use of the Common Areas and Facilities, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection under such other risks as are customarily covered with respect to project similar to the Project in construction, locations, and use, including but not limited to, host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. Such policy shall, by its terms provide for "severability of interest" or shall contain a specific endorsement to preclude the insurer's denial of an Owner's claim because of the negligent acts of the Association or any member thereof, and shall provide that it may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association.

4. General Requirements Concerning Insurance. Each insurance policy maintained pursuant to the foregoing Sections 1, 2, and 3 shall be in accordance with and consistent with local and State of Utah insurance law and shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Key Rating Guide of Las VI or better. No such policy shall be maintained where: (I) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (ii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collection insurance proceeds. The provisions of this Section 4 of the foregoing Sections 1, 2, and 3 shall not be construed to limit the power of authority of the Association or any Owner to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association or such Owner may deem appropriate from time to time.

5. INSURANCE ON LOTS AND HOMES. THE ASSOCIATION SHALL HAVE NO DUTY OR RESPONSIBILITY TO PROCURE OR MAINTAIN ANY FIRE, LIABILITY, FLOOD, EARTHQUAKE OR SIMILAR CASUALTY COVERAGE FOR A LOT OR HOME OR LIMITED COMMON AREA, OR FOR THE CONTENTS OF ANY HOME. THE ASSOCIATION ALSO SHALL HAVE NO DUTY TO INSURE AGAINST ANY NEGLIGENT ACTS OR EVENTS OCCURRING AT OR ON A LOT, LIMITED COMMON AREA OR IN A HOME.

6. Lot Owner Insurance on Limited Common Area. Owners shall obtain and maintain property and liability insurance covering all Limited Common Area adjacent and appurtenant to the Owner's Lot as if the Limited Common Area were exclusively owned by the Owner. This includes but is not limited to a policy of property insurance (except land, foundation, excavation, and other items normally excluded from coverage) including fixtures and building service equipment, to the extent they are part of the Common and Limited Common Areas, as well as personal property and supplies owned by the Owner. As a minimum, such policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage enforcement, and by all other perils which are customarily covered and the use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of the Limited Common Area of the Lot covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. Such policy shall contain such deductible amount as the Lot Owner shall determine from time to time but not more than \$2,000.00.

7. Liability Insurance. Owners shall maintain in force and pay the premium for a policy providing

comprehensive general liability insurance coverage covering all of the Limited Common Area adjacent and appurtenant to the Owner's Lot. The coverage limits under such policy shall be in amounts deemed appropriate by the Board of Directors. Nevertheless, such coverage shall not be less than Five Hundred Thousand Dollars (\$500,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence with a maximum of One Million Dollars (\$1,000,000.00) per year. Coverage under such policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation maintenance, or use of the Limited Common Area adjacent and appurtenant to the Owner's Lot. Additional coverages under such policy shall include protection under such other risks as are customarily covered with respect to homeowner's insurance.

8. General Requirements Concerning Insurance. Each insurance policy maintained pursuant to the foregoing Sections shall be in accordance with and consistent with local and State of Utah insurance law and shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Key Rating Guide of Las VI or better. No such policy shall be maintained where: (i) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (ii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collection insurance proceeds. The provisions of this Section and of the foregoing Sections shall not be construed to limit the power of authority of the Association or any Owner to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association or such Owner may deem appropriate from time to time.

#### ARTICLE X DESTRUCTION OR CONDEMNATION OF COMMON AREAS

1. Definitions. The provisions of this Article X shall apply with respect to the destruction or condemnation of all or any part of the Common Areas. As used in this Article, each of the following terms shall have the meaning indicated:

- a. Destruction. "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Common Areas or any part thereof, the excess of Estimated Costs of Restoration Over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value. "Partial Destruction" shall mean any other damage or destruction to the Common Areas or any part thereof.
- b. Condemnation. "Substantial Condemnation" shall exist whenever a complete taking of the Common Areas has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.
- c. Restoration. "Restoration," in the case of any damage or destruction, shall mean restoration of the Common Areas in accordance with the Declaration, the Plat, and the original plans and specifications for the Common Areas to a condition the same or substantially the same as the condition in which the Common Areas existed prior to the damage or destruction concerned; in the case of condemnation, shall mean restoration of the remaining portion of the Common Areas to an attractive, sound, and desirable condition.
- d. Restored Value. "Restored Value" shall mean the value of the Common Areas (excluding raw land value) after Restoration.
- e. Estimated Costs of Restoration. "Estimated Costs of Restoration shall mean the estimated

costs of Restoration.

f. Available Funds. "Available Funds" shall mean any proceeds of insurance, condemnation awards, payment in lieu of condemnation and any uncommitted funds of the Association, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee of a Lot for the condemnation or taking the Lot in which they are interested.

2. Determination by Board of Directors. Upon the occurrence of any damage or destruction to the Common Areas or any part thereof, or upon a complete or partial taking of the Common Areas under eminent domain or by grant or conveyance in lieu thereof, the Board of Directors of the Association shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five (25%) or more of the estimated Resorted Value. In making such determination the Board of Directors may retain and rely upon one or more qualified appraisers or other professionals.

3. Restoration of Common Areas. Restoration of the Common Areas shall be undertaken by the Association promptly without a vote of the Owners in the event of a partial Destruction or Partial Condemnation, and shall also be undertaken in the event of Substantial Destruction or Substantial Condemnation unless the failure to make Restoration is approved by a majority of the Voting Power present at any meeting called for such purpose, as explained by Article III. Within thirty (30) days after the Board of Directors has determined that Substantial Destruction or Substantial Condemnation exists, the Association shall send to each Owner a written description of the destruction or condemnation involved, and shall notice a meeting of the Members in accordance with the applicable provisions of this Declaration and the Articles to determine the preferences of the Members regarding Restoration. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Association exceed the actual cost of Restoration when Restoration is undertaken, the excess shall be paid to the Association and used to offset assessments required. In the event the actual cost of restoration exceeds Available Funds, all of the Lots shall be equally assessed for the deficiency. Regardless of the extent of destruction and the cost of restoration, such restoration will be accomplished if required by Washington County, as for example, in the case of destruction of a detention pond or storm sewer.

4. Lack of Restoration. Unless Restoration is accomplished in accordance with the foregoing Section 3, the Association shall take such action as is necessary to make the remaining Common Areas safe for the occupants and Owners of the Project and defray the costs thereof from Available Funds. In the event such Funds are insufficient for such purposes, the Owners of all Lots shall be equally assessed for the deficiency. Any remaining available funds shall be paid to the Association and used to offset the assessments required by Article V hereof.

5. Authority of Association to Represent Owners in the Condemnation or to Restore. The Association, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities. The award in any condemnation proceeding, the proceeds of any settlement related thereto, and the proceeds of any insurance on the Common Areas shall be payable to the Association for the use and benefit of its Members. The Association, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore the Common Areas whenever Restoration is undertaken as provided in Section 3 of this Article or when the Common Areas are made safe as provided in Section 4 of this Article. Such authority shall include the right and power to enter into any contracts, deeds, or other instruments which may be necessary or appropriate.

ARTICLE XI  
INHERENT RISKS OF WASH. STORM DRAINS AND FOUNTAIN

1. Assumption of Risks. By taking title to a Lot, every Owner will be deemed to be aware of and

agreed to, and will be deemed to have explained and made known to said Owner's spouse, children, other relatives, visitors, invitees, guests, and business associates who come into the Project to visit or at the invitation of said Owner (collectively the "Informed Persons"), the facts (a) that the Project is surrounded by a wash, storm drains and a fountain; (b) that said wash, storm drains and a fountain pose inherent risks of danger, including drowning and suffering injury, including without limitation, death, physical or emotional injury, or damage to person, property or third parties, all of which injuries or damage may require costly emergency evacuation and/or emergency or continuing medical care; and (c) that eliminating the risks of living in an environment such as the Project—for example, by entirely surround the Project with fences or walls, or by placing warning signs in every possible dangerous location— would be anathema to the Owner's decision to live in this particular environment, and would greatly reduce the beauty of and the views from the Project, which beauty and views the Owner is deemed to want more than removal of such risks. Therefore, every Owner and every Informed Person shall be deemed, by virtue of coming onto the Project, to have made the voluntary decision to confront the risk posed by the wash, storm drains and a fountain, and to have accepted and assumed all of the risks posed by the wash, storm drains and a fountain surrounding the Project, whether or not such wash, storm drains and a fountain are located within the Project, including Common Areas or outside of the Boundaries of the Project.

Nothing contained in this provision is intended to absolve the Declarant from its duty to abide by all applicable zoning and building ordinances, including when applicable, any ordinance of the City of Santa Clara requiring the Declarant to construct walls, unless the same is waived through official action of said municipality.

2. Release and Indemnification. Every Owner, by taking title to a Lot, shall be deemed (a) to have released and forever discharged, and to have agreed to indemnify and hold harmless, the Association and the Declarant from any and all claims, demands, losses, damages, injuries or causes of action, which are in any way connected with or result from involvement or contact with the wash, storm drains and/or a fountain within and surrounding the Project, including any such claims, demands, or causes of actions which allege negligent acts or omissions of the Association or the Declarant; (b) to have released the Association and the Declarant from any duty that either may have to protect the Owner from these risks, which risk Owner by taking title to a Lot, has acknowledged he or she does not want eliminated because of the detrimental impact on the aesthetics and beauty of the Project that would result from eliminating such risks; and (c) to have agreed to indemnify and hold harmless the Association and the Declarant from any and all claims or causes of action which are brought by or on behalf of the Informed Persons with respect to any matters similar to those from which the Owner has released and indemnified the Association and the Declarant pursuant to the previous provisions of clauses (a) and (b) of this Section 2. The releases and indemnifications contained in this Section 2 shall include an indemnification in favor of the Owner of the Association and the Declarant from any and all attorneys' fees and costs incurred by either of them in enforcing their rights under the provisions of this Article XI.

3. Execution of Release and Indemnification. In addition to and notwithstanding the provisions of Section 2 of this Article XI as set forth above, each and every Owner taking Title to a Lot agrees, as a condition of being a member of the Association and as a condition to being entitled to use all of the Common Areas of the Project, to execute and deliver to the Association and the Declarant a "Residents' Agreement, Release and Acknowledgment of Risk" in the form attached hereto as Exhibit "B." Until said document has been executed and delivered to the Association, for the benefit of both the Association and the Declarant, by each and every person who becomes an Owner of a lot in the Project, the Association shall have the right to withhold ACC approval of plans and construction and disallow the use of all Common Areas, including the roads of the Project, by said Owner, it being understood that an inherent part of being an Owner in the Project is the obligation to execute and deliver said document.

4. Rules and Regulations. Notwithstanding the provisions of Sections 1, 2 and 3 of this Article XI, the Association, and its Board of Directors, shall have the right, in furtherance of their rights and duties set out in this Declaration, the Articles and Bylaws, and other law, to enact and adopt such rules and Regulations governing the use of and access to the wash, storm drains and a fountain in and around the Project, and to develop such signage, trails, look-out points, walls, fences and other barriers (collectively "Signs and Barriers"), as they deem reasonable and prudent to control and maintain access to and the use of the wash, storm drains and a fountain in and around the Project. The purpose of promulgating such rules and regulations and constructing and developing any such signs and

barriers will not be to eliminate the risks, or even necessarily to ameliorate the risks associated with the wash, storm drains and a fountain, it being understood that all Owners have assumed those risks pursuant to, and for the reasons stated in, the provisions of Sections 1, 2 and 3 of this Article XI. Rather, the reason for promulgating such rules and regulations and developing such Signs and Barrier, if any are so promulgated or developed, will be to meet the desires and needs of the Member of the Association. For example, the Members of Association may desire to minimize the risk in one particular area by building a wall, or the Members may desire to minimize the impact to native vegetation in another particular point by building a look-out area pavilion. Such rules and regulations, and Signs and Barriers, will allow the Association and its Member to balance how much risk posed by wash, storm drains and a fountain they want to face or allow to exist with impact on the aesthetics, views and vegetation and environment of the Project that occurs when rules, regulations, Signs and Barriers are developed. The Members of the Association through the ordinary operations of the Association, shall be entitled to establish this balance as they deem desirable.

ARTICLE XII  
ANNEXATION OF ADDITIONAL PROPERTIES

1. Annexation by Declarant. Declarant reserves the right and option to expand the Property and annex any property to the Project. The annexation of such land shall become effective upon the recordation in the Office of the County Recorder of Washington County, State of Utah, of a Supplementary Declaration which (i) describes the land to be annexed or incorporated, (ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to the Declaration, and (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land. When such annexation becomes effective, the annexed land shall become part of the Property and shall be subject to the terms of the covenants, conditions and restrictions, which terms, covenants, conditions and restrictions run with the land, of this Declaration or any supplements or amendments thereto.

2. Limitation on Annexation. Declarant's right to annex said land to the Property shall be subject to the following limitations:

a. Any additional subdivisions annexed hereto by Declarant shall be comprised exclusively of common and limited common area and/or residential single family residences, architecturally compatible to the existing Living Units; substantially similar to the Living Units already constructed; and constructed out of similar materials. Declarant shall have the sole discretion to develop the Common Area in said additions and to include any facilities or amenities thereon that Declarant deems necessary.

b. Declarant's right to annex land to the Property shall expire ten (10) years after this Declaration is filed of record in the Office of the County Recorder of Washington County, State of Utah.

c. If additional subdivisions are created by Declarant pursuant to the terms of this Article, the Owners in said additions shall be Members of the Association and shall have the same rights to the use and enjoyment of the Common Area of the Association as any other Member. The Common Area in any such additional subdivisions as set forth therein shall be deeded as set forth in Article IV, Section 4.

d. Declarant reserves unto itself and its assigns the right to create Common Area and facilities within the annexed land. No assurances can therefore be made with respect to such items.

3. Supplementary Declaration. The annexation authorized above shall be made by filing of record a Supplementary Declaration of Covenants, Conditions, and Restrictions or similar instrument, with respect to the annexed property which shall extend the plan of this Declaration to such property. Such Supplementary Declaration contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. The recordation of such Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and



thereafter all of the Owners of Lots in said real property shall automatically be Members of the Association.

4. Declarant's Right to Amend. Until December 31, 2015, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration or the Plat, or both, as may be reasonable, necessary or desirable (I) to adjust the boundaries of the Lots, including adding or deleting Common or Limited Common Area (by filing an appropriate amended plat) to accommodate design changes or changes in type of Living Units or adjustments to Lot configuration; (ii) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information; (iii) to better ensure, in light of existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Project.

5. Expansion of Definitions. In the event the Property is expanded, the Definitions used in this Declaration automatically shall be expanded to encompass and refer to the Property as so expanded, e.g., "Property" shall mean the real property described herein, plus any additional real property annexed by a Supplementary Declaration or by Supplementary Declarations, and reference to this Declaration shall mean this Declaration as so supplemented.

### ARTICLE XIII MISCELLANEOUS

1. Enforcement. The Declarant, the Association, and any aggrieved Owner shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws, the plat or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Declarant, the Association, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party to any action brought to enforce the terms of this Declaration or any supplements or amendments thereto shall be entitled to costs and reasonable attorney fees.

Every act or omission whereby any restriction, condition or covenant as set forth in this Declaration is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by the Declarant or by affected Owners, and such remedy shall be deemed to be cumulative and not exclusive.

2. Unanimous Written Consent in Lieu of Vote. In any case in which the Declaration requires for authorization or approval of a transaction or matter the assent or affirmative vote of a stated percentage of the votes of the Association, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from every Member entitled to cast a vote. The following additional provisions shall govern any application of this Section 2.

- a. All necessary consents must be obtained prior to the expiration of one hundred eighty (180) days after the first consent is given by any Member.
- b. Any change in ownership of a Lot which occurs after consent has been obtained from the member having an interest therein shall not be considered or taken into account for any purpose.

3. Amendment. Except as provided in and/or subject to the term (a) below, the consent of two-thirds (2/3rd) of the Voting Power present at any meeting duly called for such purpose, as explained by Article III, shall be required and shall be sufficient to amend this Declaration, the Plat or the Articles. Notice of the substance of the proposed amendment shall be sent to all Members at least ten (10) but not more than fifty (50) days prior to the meeting date. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board of Directors of the Association. In such instrument the Association shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the

following:

- a. The consent of at least seventy-five percent (75%) of the Voting Power present at any meeting called for such purpose, as explained by Article III, and the consent of Mortgagees holding Mortgages on at least seventy-five (75%) percent of the Lots which are then subject to Mortgages shall be required for any amendment which would terminate the legal status of the Project as a subdivision.

The vote and consent requirements set forth in the foregoing Subsection of this Section shall not be applicable to additions or amendments to this Declaration, the Plat, or the Articles which implement a decision concerning whether or not Restoration of the Common Areas should be undertaken or concerning the nature of such Restoration in accordance with the provisions of Sections 1 through 5 of Article X hereof in the event of Partial or Substantial Destruction or Condemnation. In addition, the granting by the Association of any permit, license, or easement for utility or similar purpose shall not require an addition or amendment to this Declaration, the Plat, or the Articles and shall not be restricted in any way by the provisions and requirements of this Article.

Declarant's Right to Amend. Notwithstanding the foregoing, until December 31, 2015, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration or the Plat, or both, as the Declarant, in its absolute and sole discretion deems reasonable, necessary or desirable. Any amendment under this provision shall be accomplished through the recordation of an instrument executed by the Board of Directors of the Association. Approval of the Members is not required for such amendments.

4. Mortgagee Protection. The lien or claim against a Lot for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such assessments or charges become due. In the event that the State of Utah should enact any statute applicable to this type of development with a provision that would allow such assessments or charges, including special assessments, to have limited priority over a Mortgage recorded before such assessments or charges become due, or in the event that the State of Utah should enact any law which would allow a lien for unpaid assessments or charges to survive foreclosure or exercise of a power of sale, all such assessments and charges, including special assessments, shall after the date of such enactment be made due and payable to the Association on a monthly basis and the lien for any fees, late charges, fines, or interest that may be levied by the Association in connection with such unpaid assessments or charges shall be deemed subordinate to the Mortgage on a Lot upon which such assessments or charges are levied.

The Association shall make available to Lot Owner, to Mortgagees, and to holders, insurers, or guarantors of any Mortgage, current copies of this Declaration, the Design Guidelines, the Plat, the Articles, and any rules and regulations concerning the Project, and the books and records and financial statements of the Association. "Available", as used in this paragraph, shall mean available for inspection upon request during normal business hours or under other reasonable circumstances.

5. Indemnification

- a. The Association shall indemnify any person 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 (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director or officer of the Association, against expenses (including attorneys' fees), judgment, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action or proceeding, and had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo 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 believed to be in and not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, shall not, of itself, create a presumption that the person had reasonable cause to believe that his conduct was unlawful.

b. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that said person is or was a Director or officer of the Association against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he believed to be in and not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue, or other matter if he has been adjudged to be liable for gross negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

c. The following provisions shall govern and apply to the right of indemnification set forth in this Section 5:

i. Any person seeking indemnification from the Association under Subsection (a) of this Section 5 as a result of being made a party or being threatened to be made a party to any action, suit or proceeding shall, within a reasonable time and before taking any significant or material action with respect to such action, suit, or proceeding, notify the Association in writing with respect to thereto and provide to the Association the opportunity to reasonably participate in such persons's defense thereto and any settlement thereof. Failure to comply with the requirements of this paragraph (i) shall bar any claim of such person for indemnification by the Association.

ii. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Subsection (a) or (b) of this Section 5, or in the defense of any claim, issue, or other matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Subsection (a) or (b) shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Subsection (a) or (b). Such determination shall be made either by the Board of Directors of the Association or by the affirmative vote of at least a majority of the Voting Power present at any meeting duly called for such purpose.

iii. Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in Subsection (a) and (b) may be paid by the Association in advance of the final disposition of such action, suite or proceeding upon a determination by the Board of Directors of the Association by the affirmative vote of at least a majority of the disinterested Directors and upon receipt of an Undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by Subsections (a) and (b).

iv. The indemnifications provided for by Subsections (a) and (b) shall not be deemed exclusive of any other rights to which those persons indemnified may be entitled under any agreements, by a vote of disinterested Members or Directors, or otherwise, as to action in such persons official capacity. The indemnification authorized by Subsections (a) and (b) shall apply to all present and future Directors and officers of the Association and shall continue as to such persons who cease to be Directors or officers of the Associations and shall inure to the benefit of the heirs and personal representatives of all such persons and

shall be in addition to all other rights to which such persons may be entitled as a matter of law.

v. The Association may purchase and maintain insurance on behalf of any person who was or is a Director or officer of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

6. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance transfer or assignment.

7. Interpretation. The captions which proceed the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provisions hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or enforce ability of the remainder hereof.

8. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitude, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Living Unit shall comply with, and all interests in all Lots and the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provisions of this Declaration and any amendments and supplements hereto.

9. Quorum Requirements. The quorum required for any action authorized by this Declaration, except those Sections which specifically set forth otherwise, shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast at least a majority of all the Voting Power of the Association, as explained by Article III, shall constitute a quorum. If a quorum is not present at the first meeting or any adjournment thereof, another meeting may be called at which meeting a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the immediately preceding meeting.

Except as specifically set forth otherwise in this Declaration, all decisions shall require the affirmative vote of at least a majority of the Voting Power present at any meeting duly called.

10. Limited Common Area. Notwithstanding anything herein to the contrary, for any amendment to the Plat or to this Declaration proposed by the Members or the Board of Directors which will affect the use and enjoyment of the Limited Common Areas, the approval of each Owner whose use and enjoyment of the Limited Common Area will be affected must be obtained in writing. This provision does not apply to the Declarant's right to amend the Plat and the Declaration.

11. Reservation of Rights. Declarant reserves the right to construct a tennis court in the Common Area of the Property. The foregoing shall not create an obligation in the Declarant to construct a tennis court or any other structure. Notwithstanding the foregoing, the Declarant has no obligation to construct a tennis court or any other structure in the Common Area. In the event that the Declarant does not construct a tennis court or some other

structure, the Association may elect to construct a tennis court or some other structure. The Association shall be responsible for the costs and expenses for the construction of the tennis court or any other structure constructed.

12. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment to the Plat shall take effect upon its being filed or recorded in the Office of the County Recorder of Washington County, Utah.

EXECUTED by Declarant this 22<sup>nd</sup> day of March, 2005.

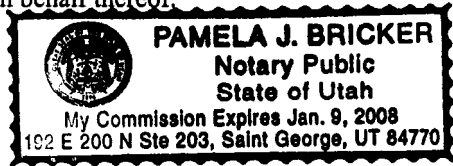
DECLARANT:

SUMMIT DEVELOPMENT ALLIANCE, L.L.C.

By: Darren Hensley  
Darren Hensley, Manager

STATE OF UTAH )  
: ss.  
COUNTY WASHINGTON )

The foregoing instrument was acknowledged before me this 22 day of March, 2005, by Darren Hensley, the Manager of SUMMIT DEVELOPMENT ALLIANCE, L.L.C., a Utah limited liability company, for and on behalf thereof.



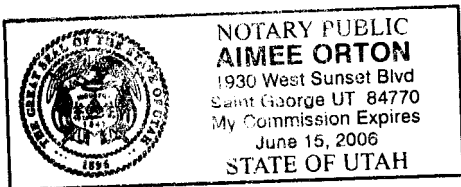
Pamela J. Bricker

EXECUTED this 23 day of March, 2005.

By: Kelly Hensley  
Kelly Hensley

STATE OF UTAH )  
: ss.  
COUNTY WASHINGTON )

The foregoing instrument was acknowledged before me this 23 day of March, 2005, by Kelly Hensley, who duly acknowledged that she executed the foregoing voluntarily.



Aimee Orton



**EXHIBIT A**

Beginning at a point on the center section line, said point being on the south line of Country Lane Estates South, said point also being North  $00^{\circ}29'07''$  East 2661.61 feet along the center section line to the Center of Section 22, Township 42 South, Range 16 West Salt Lake Base & Meridian and South  $89^{\circ}20'19''$  East 1,024.64 feet along the center section line from the South Quarter Corner of Section 22, Township 42 South, Range 16 West Salt Lake Base & Meridian, and running;

thence South  $89^{\circ}20'19''$  East 317.27 feet along the center section line, which is also the south line of said Country Lane Estates South, to the 1/16th line;

thence South  $00^{\circ}34'16''$  West 666.25 feet along the 1/16 line;

thence North  $89^{\circ}17'40''$  West 216.27 feet to the east line of Country Lane;

thence Northwesterly 28.73 feet along an arc of a 427.00 foot radius curve to the left (center bears South  $35^{\circ}20'14''$  West, long chord bears North  $56^{\circ}35'25''$  West 28.72 feet with a central angle of  $03^{\circ}51'17''$ );

thence North  $58^{\circ}31'03''$  West 72.75 feet;

thence Northwesterly 333.81 feet along an arc of a 325.00 foot radius curve to the right (center bears North  $31^{\circ}28'57''$  East, long chord bears North  $29^{\circ}05'34''$  West 319.33 feet with a central angle of  $58^{\circ}50'59''$ );

thence North  $00^{\circ}19'56''$  East 13.15 feet;

thence North  $89^{\circ}17'40''$  West 30.00 feet;

thence North  $00^{\circ}19'56''$  East 194.88 feet;

thence South  $89^{\circ}20'19''$  East 30.00 feet;

thence North  $00^{\circ}19'56''$  East 38.16 feet

thence South  $89^{\circ}40'04''$  East 145.00 feet;

thence North  $00^{\circ}19'56''$  East 89.00 feet to the Point of Beginning.

Containing 270,712 square feet or 6.215 acres

**EXHIBIT "B"****RESIDENTS'  
AGREEMENT, RELEASE  
AND ACKNOWLEDGMENT OF RISK**

In consideration of the past, present and future services and assets provided by Summit Development Alliance, L.L.C. (the "Developer"), the developer of Villa Bonita Estates, ("Villa Bonita Estates"), and by the Villa Bonita Estates Homeowners Association, Inc. (the "Association"), and their agents, members, partners, managers, officers, trustees, directors, volunteers, employees, and all other persons or entities acting in any capacity on their behalf, and as additional consideration for the opportunity to purchase a Lot in Villa Bonita Estates, I hereby agree to release, discharge and indemnify the Association and the Developer, its employees and agents, on behalf of myself, my children, parents, heirs, assigns, invitees, guests, personal representatives and estate, as follows:

1. I acknowledge that residing in the Villa Bonita Estates development, and thereby being a member of the Association, signifies my choice to live in a natural environment which is intended to be as undisturbed as possible.
2. I have physically explored and studied Villa Bonita Estates and I acknowledge that the development includes and is surround by wash, storm drains and a fountain that present potential dangers. I acknowledge that these wash, storm drains and a fountain pose inherent risks of drowning and other injury. I understand that any injury suffered may cause death, physical or emotional injury, or damage to myself, to property, or to third parties, and/or may require costly emergency evacuation and/or emergency or continuing medical care.
3. Furthermore, I understand and acknowledge that eliminating the risk of living in an environment such as Villa Bonita Estates— for example, by entirely surrounding the development with fences, or by placing warning signs in every particularly dangerous location—would be anathema to my choice to live in the particular environment, and would greatly reduce the beauty of the views from the development, which I would not want to happen.
4. Therefore, I expressly agree and promise to accept and assume all the risk posed by the wash, storm drains and a fountain surrounding Villa Bonita Estates. My choice is purely voluntary, and I elect to do so in spite of the risks.
5. Further, I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless the Association and the Developer and their employees and agents, from any and all claims, demands, losses, damages, injuries or causes of action, which are in any way connected with or result from involvement or contact with the wash, storm drains and a fountain in and surrounding Villa Bonita Estates, whether on private land or within common areas of Villa Bonita Estates, **including any such claims, demands, or causes of action which allege negligent acts or omissions of the Association or the Developer.** I understand that I am releasing the Association and Developer and their employees and agents from any duty to protect me from these risk, which risks I acknowledge I do not wish to have eliminated because of the negative and detrimental impact on the aesthetics and beauty of Villa Bonita Estates that would result from eliminating such risks.
6. In consideration of my minor children, whether now existing or yet to be born, being permitted to live in Villa Bonita Estates and to enjoy the common areas of this development, I further agree to indemnify and hold harmless the Association and the Developer and their employees and agents from any and all claims which are brought by or on behalf of these children in respect of those matters from which I have release and indemnified the Association and the Developer and their employees and agents pursuant to the provisions of paragraph 5 above.



- 7. In consideration of my guests and invitees, including without limitation my relatives, friends, acquaintances, and business associates, being permitted by the Association and its governing rules to visit Villa Bonita Estates and to enjoy this development, including its common areas, I further agree to indemnify and hold harmless the Association and the Developer and their employees and agents from any and all claims which are brought by or on behalf of those guests and invitees in respect to those matters from which I have released and indemnified the Association and the Developer and their employees and agents pursuant to the provisions of paragraph 5 above.
- 8. Should the Association or the Developer or anyone acting on their behalf, be required to incur attorney's fees and costs to enforce this agreement, I agree to indemnify and hold them harmless for all such fees and costs.
- 9. I certify that I have adequate insurance to cover any injury or damage I may cause or suffer because of the wash, storm drains and a fountain surrounding Villa Bonita Estates, or on account of my obligations under this document, or else I agree to bear the costs of such injury or damage myself. I further certify that I have no medical or physical conditions which would interfere with my safe enjoyment of the wash, storm drains and a fountain surrounding Villa Bonita Estates, or else I am willing to assume—and bear the costs of—all risks that may be created, directly or indirectly, by any such condition.

**By signing this document, I acknowledge that if anyone is hurt or property is damaged as a result of the inherent risks of my choice to live at Villa Bonita Estates, I may be found by a court of law to have waived my right to maintain a lawsuit against the Association and/or the Developer and their employees and agents on the basis of any claim from which I have released them herein.**

**I have had sufficient opportunity to read this entire document. I have read and understood it, and I agree to be bound by its terms.**

Resident's Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Phone: \_\_\_\_\_ Date: \_\_\_\_\_