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Fee 27⁰⁰ Debra L. Ames, Rich County Recorder

Requested By Dennis Bulluck

SUPPLEMENTARY

DECLARATION OF COVENANTS AND RESTRICTIONS
OF RASPBERRY PATCH ESTATES - UNIT NO. IV

THIS DECLARATION made this 23 day of March, 1993, by HARBOR VILLAGE AT BEAR LAKE CORPORATION, a Utah corporation, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of certain real property located in Rich County, State of Utah, as more particularly described in paragraph 2 below, and desires to create thereon the third phase of a residential/recreational home subdivision and a common roadway for the benefit of the said subdivision; and

WHEREAS, Developer desires to enhance and protect the value, attractiveness and desirability of the lots constituting the Subdivision; and

WHEREAS, Developer desires to create an agency to which should be delegated and assigned the powers of maintaining a roadway and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of Utah, as a non-profit corporation, The Raspberry Patch Estates Homeowners Association, Inc., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, Developer hereby declares that all of the real property described below and each part thereof shall be held, sold, and conveyed only subject to the following easements,

covenants, conditions, and restrictions, and the recreation/residential zoning requirements of Garden City, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

1. DEFINITIONS. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the Raspberry Patch Estates Homeowners Association, Inc.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of paragraph 2 hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties and intended to be devoted to the common-use and enjoyment of the owners of The Properties.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.

(e) "Living Unit" shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family.

(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any Lot or Living Unit situated upon The Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(g) "Member" shall mean and refer to all those Owners who are members of the Association as provided in paragraph 3.

2. PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO.

(a) Existing Property: The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Rich County, State of Utah, and known by official plat designation as Raspberry Patch Estates - Unit No. IV residential home subdivision of Garden City, pursuant to a plat recorded on 25 March, 1993, in the Records of the Recorder of Rich County, State of Utah, Book 06, Pages 211, all of which real property shall hereinafter be referred to as "Existing Property."

(b) Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(1) Additions in Accordance With a General Plan of Development. The Developer, its heirs and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development, provided that such additions are in accord with a General Plan of

Development prepared prior to the sale of any Lot or Living Unit and made known to every purchaser (which may be done by brochure delivered to each purchaser) prior to such sale.

Such General Plan of Development shall show the proposed additions to the Existing Property and contain: (a) a general indication of size and location of additional development stages and proposed land uses in each as generally reflected in the Raspberry Patch Overall Preliminary Plan attached as Exhibit "A" and by this reference incorporated herein; (b) the approximate size and location of common properties proposed for each stage; (c) the general nature of proposed common facilities and improvements; (d) a statement that the proposed additions, if made, will become subject to assessment for their just share of Association expenses; and (e) a schedule for termination of the Developer's right under the provisions of this subsection to bring additional development stages within the scheme. Unless otherwise stated therein, such General Plan shall not bind the Developer, its heirs and assigns, to make the proposed additions or to adhere to the Plan in any subsequent development of the land shown thereon and the General Plan shall contain a conspicuous statement to this effect.

The additions authorized under this and the succeeding subsection, shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme

of the covenants and restrictions of this Declaration to such property.

Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the Existing Property.

(2) Other Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its Articles of Incorporation or Bylaws the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions, as described in subsection (1) hereof.

(3) Mergers. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this

Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided.

3. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.

(a) Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Living Unit which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

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

Class A. Class A members shall be all those owners as defined in paragraph 1 with the exception of the Developer. Class A members shall be entitled to one vote for each Lot or Living Unit in which they hold the interests required for membership by paragraph 1. When more than one person holds such interest or interests in any Lot or Living Unit, all such persons shall be members, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

Class B. Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Lot or Living Unit in which it holds the interest required for membership by Section 1, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier: (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or (b) on January 1, 2001.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot or Living Unit in which it holds the interests required for membership under Section 1.

4. PROPERTY RIGHTS IN THE ROADWAY.

(a) Members' Easements of Enjoyment. Subject to the provisions of (c), every Member shall have a right and easement of enjoyment in and to the roadway and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

(b) Title to Common Properties. The Developer may retain the legal title to the roadway until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provision herein, the Developer

hereby covenants, for itself, its heirs and assigns that it shall convey the roadway to the Association, free and clear of all liens and encumbrances, not later than January 1, 2001.

(c) Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(1) the right of the Developer, and of the Association in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the roadway and in aid thereof to mortgage said roadway. In the event of a default upon any such mortgage the lender's rights hereunder shall be limited to a right, after taking possession of such roadway, to charge admission and other fees as a condition to continued enjoyment by the members until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and

(2) the right of the Association to take such steps as are reasonably necessary to protect the above-described roadway against foreclosure; and

(3) the right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(4) the right of the Association to charge reasonable admission and other fees for the use of the roadway; and

(5) the right of the Association to dedicate or transfer all or any part of the roadway to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken.

5. COVENANT FOR MAINTENANCE ASSESSMENTS.

(a) Creation of the Lien and Personal Obligation of Assessments. The Developer for each Lot or Living Unit owned by him within The Properties hereby covenants and each Owner of any Lot or Living Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments,

together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

(b) Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in The Properties and in particular for the payment of costs, including attorney's fees, incurred by the Association in enforcing the covenants and obligations contained herein, and for the improvement and maintenance of the roadway, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

(c) Basis and Maximum of Annual Assessments. Until the year beginning January, 1993, the annual assessment shall be \$50.00 per lot. From and after January 1, 1994, the annual assessment may be increased by vote of the Members, as hereinafter provided, for the next succeeding three years and, at the end of each such succeeding period of three years, for each succeeding period of three years thereafter.

The Governing Board of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

(d) Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the roadway, or other unanticipated costs, provided that any such assessment shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

(e) Change in Basis and Maximum of Annual Assessments. Subject to the limitations of (c), and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by (c) hereof prospectively for any such period provided that any such change shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of (c) hereof

shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under paragraph 2(b) hereof.

(f) Quorum for Any Action Authorized Under (c) and (d). The quorum required for any action authorized by (c) and (d) hereof shall be as follows:

At the first meeting called, as provided in (c) and (d), the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in (c) and (d), and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(g) Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Governing Board of the Association to be the date of commencement.

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year,

after the first year, shall become due and payable on the first day of March of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in (c) hereof as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under (d) hereof shall be fixed in the resolution authorizing such assessment.

(h) Duties of the Governing Board. The Governing Board of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period of at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether

said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(i) Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in (g) hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period, and shall also pass to his successors in title when expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of 18 percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

(j) Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

(k) Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (2) the roadway Common Properties as defined in paragraph 1(a) hereof; (3) all properties exempted from taxation by the laws of the State of Utah upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

6. ARCHITECTURAL CONTROL COMMITTEE. No building, screen, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior addition to

or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. The Architectural Control Committee shall be composed of Dennis F. Bullock and Martha J. Bullock and one original devisee from each lot who shall be named by the devisees of each lot upon devise by Developer. The Architectural Control Committee shall have full and absolute authority to approve or disapprove. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Architectural Control Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Architectural Control Committee nor its designated representatives shall be entitled to compensation for services performed pursuant to this covenant.

7. ARCHITECTURAL COMMITTEE ACTION TIME LIMITATION. In the event said Architectural Control Committee, or its designated representative, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and paragraph 1 above will be deemed to have been fully

complied with, with respect to that particular Lot or Living Unit and not with respect to any other Lot or Living Unit or subsequent charge thereto.

8. LAND USE AND BUILDING TYPE. No residential lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any residential lot other than one single-family dwelling and private garages. All construction shall be of new materials, except that used with prior written approval of the Architectural Control Committee. No round buildings will be allowed.

9. COLOR OF BUILDINGS. It is in the interest of this covenant to promote an appearance and atmosphere of earth tones, and therefore no houses shall be permitted which exteriors are not shades of whites, browns, greens and some grays. Blues, bright yellows, and other bright colors of red, orange, etc. shall not be permitted.

10. OUTDOOR RECREATION VEHICLES. Outdoor recreation vehicles such as boats, campers, trailers, motorhomes, etc. will not be allowed to remain on residential lots unless said vehicles are retained in a garage or behind a sufficiently high screen, fence, wall, etc. enclosed on all sides to screen said vehicles.

11. DWELLING SIZE. No dwelling shall be erected with a ground floor area of less than 900 square feet exclusive of attic space, lofts, and one-story open porches.

12. OFF-STREET PARKING. All dwellings shall have a gravel driveway running from the street to said dwelling with sufficient

space to provide off-street parking for all vehicles kept at said dwelling.

13. CONSTRUCTION PERIOD. Construction must be completed within two years from date of beginning of construction.

14. CONFORMITY. All dwellings shall conform to Utah Building Code and Garden City Zoning Ordinances.

15. EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other article shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

16. NUISANCES. No noxious or offensive activity shall be carried on upon any lot nor upon the roadway or any other common areas or Living Unit, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

17. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any lot at any time as a residence either temporarily or permanently. No mobile homes are permitted.

18. SIGNS. No signs of any kind shall be displayed to the public view on any lot.

19. LIVESTOCK AND POULTRY. No animals, livestock, or poultry of any kind shall be bred or kept on any lot for any commercial purpose and then only so long as they are restricted to the owner's premises or on leash under handler's control.

20. GARBAGE AND REFUSE DISPOSAL. No lot shall be used or maintained as a dumping lot for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Each lot and its abutting street are to be kept free of trash, weeds and other refuse by the lot owner. No unsightly materials or other objects are to be stored on any lot in view of the general public.

21. FENCES AND LANDSCAPING. All fences as to type and height must be approved in advance by the Architectural Control Committee. Trees, lawns, shrubs, or other plantings provided by the Developer shall be properly nurtured and maintained or replaced at the property owner's expense upon request of the Architectural Control Committee.

22. DURATION. The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by each and every property owner of the land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of

twenty-one (21) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the owners of eighty percent (80%) of the lots has been recorded, agreeing to change said covenants and restrictions in whole or part. Amendments to these covenants and restrictions may be made at any time by an instrument signed by one hundred percent (100%) of the then owners of the lots and living units. Provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is sent to every owner at least thirty (30) days in advance of any action taken.

23. NOTICES. Any notice required to be sent to any owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner on the records of the Tax Assessor of Rich County, State of Utah, at the time of such mailing.

24. ENFORCEMENT. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by any owner or association to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

25. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

DATED the day and year first above written.

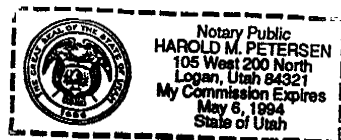
HARBOR VILLAGE AT BEAR LAKE CORP.,
a Utah corporation

ATTEST:

Martha J. Bullock Secretary
By Dennis J. Bullock President

STATE OF UTAH)
) : ss.
County of Cache)

On the 11 day of February, 1993, personally appeared before me Dennis F. Bullock and Martha J. Bullock, who, being by me duly sworn, did say that they are the President and Secretary respectively of Harbor Village At Bear Lake Corp., and that the said instrument was signed in behalf of said Corporation by authority of a resolution of the Board of Directors or its By-Laws, and the aforesaid officers acknowledged to me that said Corporation executed the same.



Harold M. Petersen
NOTARY PUBLIC
Residing at: Logan, Cache Co., UT
Commission Expires: 05-08-94