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**FIRST AMENDED AND RESTATED
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
GARDEN VILLAGE of HOLLADAY
A Utah Condominium Project
Holladay, Utah**

This First Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the GARDEN VILLAGE CONDOMINIUM PROJECT (the "Declaration") is adopted by the Association on the date evidenced below. This document is intended to create a Condominium within the meaning of the provisions of the Utah Condominium Ownership Act, Section 57-8-1, et seq., Utah Code Annotated, 1953, as amended.

RECITALS

WHEREAS, capitalized terms in this Declaration are defined in Article I; and

WHEREAS, the Association, through its members, holds title to the tract of real property located in the City of Holladay, Salt Lake County, Utah, which is particularly described in Article II of this Declaration. Each of the numbered lots shown on the subdivision plat filed in the records of the Salt Lake County Recorder shall be deemed a single Unit of the condominium project, as approved by the City of Holladay, Utah (the "City"), and as described in this Declaration, which shall, together with an undivided percentage interest in and to the common areas and facilities, subject to the covenants, conditions, limitations restrictions and easements set forth herein, be conveyed to Owners in fee simple; and

WHEREAS, by this Declaration, a common scheme and plan of mutually beneficial restrictions has been established for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein conveyed and to establish thereon a condominium project featuring twin home Units in accordance with the terms hereof;

NOW, THEREFORE, it is hereby declared that the Property which is the subject of this Declaration shall be held, sold, conveyed, transferred, assigned, subdivided, leased, rented, encumbered, occupied and used, subject to the following Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the title to the real property and shall be binding on and inure to the benefit of the Association and all owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

**ARTICLE I.
DEFINITIONS**

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

1.1 "**Articles**" or "**Articles of Incorporation**" shall mean and refer to the Articles of Incorporation of the Association, which shall be filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code at or about the time this Declaration is filed for record.

1.2 "**Association**" shall mean and refer to Garden Village Homeowners Association, Inc., a Utah nonprofit corporation.

1.3 "**Board of Directors**," "**Board of Trustees**" or "**Board**" shall mean and refer to the governing board of the Association, whose officers shall be appointed or elected in accordance with the Declaration, the Articles of Incorporation and Bylaws of the Association. The officers shall constitute the Board.

1.4 "**Bylaws**" shall mean and refer to the Bylaws of the Association as amended from time to time.

1.5 "**Common Areas**" shall mean, refer to, and include:

1.5.1 The real property and interests in real property which this Declaration submits to the provisions of the Act, including all landscaping, gazebos, tables, BBQs, playground equipment, street lighting, signs, sidewalks, walkways, parking areas, private drives or roadways located thereon (but excluding all Units as herein defined);

1.5.2 Those common areas and facilities and limited common areas and facilities specifically set forth and designated as such on the map;

1.5.3 All other parts of the project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; and

1.5.4 All common areas and facilities and all limited common areas and facilities as defined in or by applicable law, whether or not expressly listed herein or on the map.

1.6 "**Common Expense Fund**" shall mean and refer to the fund created or to be created pursuant to the provisions of Article V of this Declaration and into which all monies of the Association shall be deposited. In the discretion of the Board, two or more separate and distinct funds may be created and maintained hereunder, such as for operating expenses and for capital expenses, both or all of which together shall constitute the Common Expense Fund

1.7 "**Common Expenses**" shall mean and refer to those costs and expenses, actual and estimated, arising out of or connected with the exercise of authority under this Declaration and/or law, the Articles or Bylaws.

1.8 "**Declaration**" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Garden Village Condominium Project, as the same may hereafter be modified, amended and supplemented.

1.9 "**Eligible Mortgagee**" shall mean and refer to a First Mortgagee, which has requested notice of certain matters from the Association in accordance with Section 1 of Article XI of this Declaration.

1.10 "**FNMA**" shall mean and refer to the Federal National Mortgage Association.

- 1.11 "**First Mortgage**" shall mean any Mortgage, which is not subject to any lien or encumbrance except liens for taxes or other liens, which are given priority by statute.
- 1.12 "**First Mortgagee**" means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.
- 1.13 "**Limited Common Areas**" shall mean any Common Areas designated as reserved for use by the Owner of a certain Unit or Units to the exclusion of the other Owners in the condominium project. Any parking areas that are identified on the Plat as Limited Common Areas are permanently assigned to specific Units, as an appurtenance to such Units, for the exclusive use of such Units. The Plat designates the Unit or Units to which each of the Limited Common Areas is reserved and appurtenant, if any.
- 1.14 "**Manager**" shall mean and refer to the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and condominium project.
- 1.15 "**Master Plan**" shall mean the plan for development of the entire condominium project, and any addition thereto, according to the various Plats, plans and all related documents which are on file relating to the official records of and for the condominium project.
- 1.16 "**Member**" shall mean and refer to an Owner as a member of the Association.
- 1.17 "**Mortgage**" shall mean any mortgage, deed of trust, or other document pledging any portion of a Unit or interest therein as security for the payment of a debt or obligation.
- 1.18 "**Mortgagee**" shall mean a beneficiary of a Mortgage as well as named Mortgagee.
- 1.19 "**Option to Expand**" is defined in Article XII.
- 1.20 "**Owner**" shall mean the person or persons owning in fee simple a Unit in the condominium project and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration, as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or non judicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).
- 1.21 "**Person**" shall mean and refer to a natural person, a corporation, a partnership, a trustee, or any other legal entity.
- 1.22 "**Plat**" shall mean and refer to the map for Garden Village Condominium Project, recorded in the office of the County Recorder of Salt Lake County, Utah, and all amendments thereto.
- 1.23 "**Property**" shall mean and refer to the entire tract of real property now or hereafter covered by the Plat. A description of the real property covered by the Plat on the effective date of this Declaration is set forth in Article II of this Declaration.
- 1.24 "**Condominium Project**" shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and Bylaws.
- 1.25 "**Twin Home Building**" shall mean and refer to a structure with a common wall shared by two Units, constituting a portion of the Condominium Project.

1.26 "**Unit**" shall mean and refer to any of the separately numbered and individually depicted and described, subdivided lots of the Property which are intended for independent use and ownership, as the same are now or hereafter shown on the Plat. The Units shall include, where applicable, the divided portion of the land surface which is so numbered and described, together with the portion of a Twin Home Building designated for such Unit.

1.27 "**VA**" shall refer to the Department of Veterans Affairs.

ARTICLE II.

BASIC PROVISIONS

2.1 **Property Description.** The property initially comprising the Condominium Project which, is owned by the via its members' respective interests in the Common Areas and Units and which shall be held, sold, conveyed, transferred, assigned, subdivided, leased, rented, encumbered, occupied and used subject to the provisions of this Declaration consists of the development of and upon the real property described on **Exhibit "A"** attached hereto, which property is situated in Salt Lake County, State of Utah.

2.2 **Submission.** The Property is currently made up of the developed property described in Section 2.1 of this Amended and Restated Declaration of Covenants, Conditions, and Restrictions. The development contains Six (6) Units. The Property is and shall be subject to the easements, covenants, conditions, restrictions, uses, limitations and obligations set forth herein. Each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Association and its members.

2.3 **Master Plan.** The final Plat for the development, as approved and recorded, and the associated expansions shall be known as the Master Plan, which shall be similar in substance, as they are filed and approved, and the associated plans for the open spaces, sidewalks, roadways, etc., as they are each recorded with the Salt Lake County Recorder are hereby incorporated into this Declaration by this reference.

Among other things, the Master Plan and the documents known as Plans and Profiles for the expansion shall describe the building types, architectural style and size and plans for the various Units, which shall include the divided portion of the land surface, and the structures, including the Twin Home Buildings, situated thereon, according to the depictions and descriptions shown on the official Plat, as may be amended from time to time.

The Property shall accordingly be subdivided into Units and Common Areas subject and according to the said Master Plan and Plats. Each Unit which is one of two "paired" Units sharing a Twin Home Building shall share Limited Common Area with the adjacent paired Unit, and shall otherwise be made up of the divided portion of the Property as shown on the Plat. Consistent and in accordance with the foregoing and with the Plats, the Master Plan and the associated plans, Twin Home Buildings are constructed together with the other improvements upon the Property in fulfillment of the Condominium Project.

Each Unit shall be capable of being independently owned, encumbered and conveyed. The actual Units shall be those which are described on the Plats which are made subject to the provisions of this Declaration and associated with the Condominium Project by the initial Declaration or any supplementation to this Declaration and on the attached Exhibit "A".

ARTICLE III.

THE ASSOCIATION

3.1 **Membership.** Every Owner shall be a Member of the Association. Membership shall be mandatory, appurtenant to, and shall not be separated from the Unit to which it pertains.

Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner of a Unit. Notwithstanding the foregoing, a developer of a Unit which has not been completed and approved for occupancy shall not be a Member in respect to such Unit until it is approved for occupancy.

If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. Subject to and in accordance with Section 3.3, below, an Owner shall be entitled to one membership for each Unit owned by such Owner. Each membership shall be transferred automatically by conveyance of that Unit. Membership in the Association may not be transferred except in connection with the transfer of a Unit.

The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Condominium Project and other books, records and financial statements of the Association.

The Association shall make available to prospective purchasers current copies of the Declaration, Bylaws, and other rules governing the Condominium Project and the most recent audited financial statement, if one has been prepared. The term "available" as used in this Section shall mean available for inspection, upon prior request, during normal business hours or under other reasonable circumstances with the costs of production being paid by the requesting party.

3.2 **Board of Trustees and Votes** Each Member shall be entitled to one (1) equal vote for his, her or its Unit, provided that the Unit has been awarded a certificate of occupancy. The number of votes appurtenant to each Unit shall be permanent, and shall not change in the event an Owner increases or decreases the size of his Unit relative to other Units.

However, if two or more Units are combined into a single Unit, the Owner of such Unit shall be entitled to the number of votes, and shall be assessed, according to the number of Units originally contained in such Unit. In the event that there is more than one Owner of a particular Unit, the votes relating to such Unit shall be exercised as such Owners may determine among themselves. Except as provided above, no Unit shall have more than one vote, regardless of the number of persons having an ownership interest in the Unit. The votes cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the votes attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit.

In the event such an objection is made, the votes involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.3 **Professional Management**. The Board may carry out through its Manager those functions which are legally delegated. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Condominium 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. Any such management contract shall provide that it may be terminated by the Association for cause upon thirty (30) days notice. Any such management contract shall run for a reasonable period from one to three (1-3) years and be renewable for consent of the Association and the management. The Manager may be required to provide fidelity insurance or bonding, pursuant to Section 6.5, below.

3.4 **Amplification**. The provisions of the Section may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

3.5 **Incorporation**. In the event that the nonprofit corporate status lapses or is otherwise administratively dissolved (that is, not by a vote of the members), the Board shall have the authority to reinstate or reincorporate the Association on its own motion and shall continue to act and govern itself, in all respects, as if said corporate status had not lapsed/expired.

ARTICLE IV.

PROPERTY RIGHTS IN COMMON AREAS AND UNITS

4.1 **Common Areas**. The Condominium Project shall include the various parts, recreational facilities, sidewalks, roadways and amenities which are expressly or impliedly designated as Common Areas on the Plat, and intended for the benefit of all Members. If the Plat designates any area(s) as Limited Common Area, then such Common Area shall be restricted in its use and access to the Unit to which it pertains, as shown on the Plat or by resolution of the Board.

4.2 **Undivided Ownership Interest in Common Areas**. Each Member shall have an equal undivided ownership interest in the Common Areas. Accordingly, such interest shall be stated in the form of a fraction, where the numerator is one (1) and the denominator is the same as the total number of Units. In accordance with the total number of Units indicated on the initial submitted plat, the ownership interest shall be one sixth (1/6) for each Unit's Owner. Such rights and the easements associated therewith (see, for example, Article IX) shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated there from. Any Member may delegate and shall be presumed to have delegated, unless the Manager is notified to the contrary, the right and easement of use and enjoyment described herein to any family members, household guest, tenant, lessee, contract purchaser, or other person who resides in such Member's Unit.

4.3 **Party Walls**. Each physical boundary (wall, etc.) in a Twin Home Building between adjacent twin home Units is a party wall. The rights and duties of the Unit Owners shall be governed by the laws of the State of Utah regarding party walls. Specifically, each Owner shall be responsible for the maintenance and repair of "their side" of the wall to the middle interior of the wall. Owners shall be responsible for all costs related to their side of the wall. However, in the event that one Owner causes damage to another Owner's side of the Party Wall, then the responsible Owner shall pay all costs of repair.

ARTICLE V.

ASSESSMENTS

5.1 **Agreement to Pay Assessments**. By acceptance of a deed or contract of conveyance and transfer of a Unit, an Owner covenants and agrees with all other Owners and the Association to be bound by and to pay in accordance with the Assessments for which provision is made in this Declaration; and further agrees that the Association shall have the power to establish and collect assessments, including interest, late fees, and a reinvestment fee, as established herein, in the Bylaws, or by Board resolution.

5.2 **Annual Assessments**. Commencing with the year, or remaining portion thereof, during which the first Unit was conveyed, annual assessments shall be computed and assessed by the Association in equal proportionate amounts against all Units in the Condominium Project which are subject to assessment as follows:

5.2.1 **Common Expense.** Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, and furnishing common services and other common items to the Units. Such estimated expenses may include, without limitation, the following: expenses of management; operation and maintenance costs; real property taxes and special assessments on the Common Areas (and on the Units which have been conveyed until those Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance of the Common Areas; landscaping; reasonable wages of Association employees, including fees for a Manager; utility charges, including charges for utility services to Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and / or sinking fund; creation of a discretionary reserve fund for maintenance repairs, and replacement of those Common Areas that must be replaced on a periodic basis, such reserve fund being discretionary unless 75% of the owners request a mandatory reserve fund in an amount chosen by 75% of the owners; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

The aggregate of all such items shall constitute the Common Expenses, and all funds received from assessments under this subsection 5.2.1 shall be part of the Common Expense Fund. Two separate and distinct funds may, in the Board's discretion, be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

Board members, however, shall not be individually liable for any allegations or actual shortfalls in any established reserve account.

5.2.2 **Apportionment.** Common Expenses shall be equally apportioned among and assessed to all Units for which a Certificate of Occupancy has been issued and their Owners.

5.2.3 **Annual Budget.** It shall be the duty of the Board to prepare and submit to the Association Members a proposed operating budget for each calendar year and may include, in addition to anticipated expenses, a reserve fund for periodic maintenance, repair and replacement of improvements, amenities, features and facilities which are part of or associated with the Common Areas. The proposal shall be made in accordance with the estimates of the Board, consistent with subsection 5.2.1. The budget shall itemize the estimated expenses, anticipated receipts and account for any deficit or surplus from the prior period of operation. The Association, in the manner described in the Bylaws, may adopt an annual budget.

5.2.4 **Notice and Payment.** Except with respect to the first fiscal year, the Board shall notify each Owner in writing as to the amount of the annual assessment against his or her Unit on or before December 15 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. All unpaid installments of any annual assessment shall bear interest at the rate established by the Board not to exceed fifteen percent (15%) per annum from fifteen (15) days after the date each such installment became due until paid.

The Board shall also have the right to assess a late fee of up to five percent (5%) of any assessment installment not paid within fifteen (15) days following the due date thereof, representing liquidated damages. In addition, in the event that any installment of the annual

assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon.

Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed fifteen percent (15%) per annum from such date until paid in full. The failure of the Board of Trustees to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment.

5.2.5 **Inadequate Funds**. In the event that the Common Expense fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Trustees may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 5.3 below, except that the vote therein specified shall be unnecessary.

5.3 **Special Assessments**. The Association shall have authority to levy special assessments to provide for: unbudgeted repairs or replacements; reconstruction or improvement of Common Areas; and/or to recover extraordinary expenses necessarily incurred by the Association. Each Owner agrees to be bound by the approved acts of the Association and agrees to pay, if required, up to \$500 per year, per Unit, as Special Assessment as may be unilaterally levied by the Board. Special assessments for repairs, replacements or improvements to the Common Areas that exceed \$500 shall be adopted and approved only by the Association's Members, by the vote of two-thirds of the total number of Units which would be entitled to vote at a meeting of the Association, if all Units were represented at such meeting.

The Board, by unanimous vote, may approve and authorize an extraordinary expense, provided that it is necessary that such expense be incurred to protect the interests of the Association, and there is not sufficient time to call a meeting of the Association, pursuant to 5.5 below. The Association, through its Board of Trustees, shall give notice in writing of each such special assessment and of the time for payment thereof; provided, however, that no payment shall be due in a period of time which is less than thirty (30) days after such notice shall have been given.

In the event that an Owner fails to pay a special assessment at the time it becomes due and payable, interest shall accrue thereon at a rate established by the Board, which rate shall not exceed fifteen (15%) percent per annum. The Board shall also have the right to assess a late fee of up to five (5%) percent of any Special Assessment. The Owners agree that any such late fee shall represent liquidated and agreed damages for the administrative expenses, losses and costs incurred by the Association as a result of such failure to pay.

5.4 **Notice and Quorum for Any Action Authorized Under Sections 5.2 and 5.3**. Assessments shall be authorized by the Members of the Association. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.2 or 5.3 of this Article shall be sent to all Members as of the Record Date (applicable to that meeting) no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes (exclusive of suspended voting rights) of Members shall constitute a quorum.

Notwithstanding anything herein or in the Bylaws to the contrary, if the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding

meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting and the only required notice of the subsequent meeting may be given at the meeting for which a quorum was not established, however, formal notice may also be given as for any other meeting, if so chosen by the Board.

5.6 **Lien for Assessments**. All sums assessed to Owners of any Unit within the Condominium Project pursuant to the Condominium Project pursuant to the provisions of this Article V, together with late charges and interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article V, the Board of Trustees shall comply with Utah law, and shall, at a minimum, prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Salt Lake County, State of Utah.

No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trusts or mortgages or in any other manner permitted by law, in such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such cost and expenses shall be secured by the lien being foreclosed. In the event that a foreclosure in the manner of deeds of trusts is utilized, the Board and all members hereby appoint the Association's attorney as Trustee to carry out the foreclosure consistent with Utah law.

The Owner shall also be required to pay to the Association any assessment against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Trustees shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association.

5.7 **Personal Obligation of Owner**. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessment hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys fees.

5.8 **Personal Liability of Purchaser**. The personal obligation of an Owner to pay unpaid assessments against his Unit as described in Section 5.7 of this Article V shall not pass to successors in title unless expressly assumed by them. Provided, however, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit unless foreclosure or acceptance of a deed in lieu of foreclosure by a First Mortgagee is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

5.9 **Evidence of Payment of Annual and Special Assessments**. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or Other person a written certificate stating (a) that all annual, special and specific assessments (including interest, costs and attorneys' fees, if any, as

provided in Section 5.2, above) have been paid with respect to any specified Unit as of the date of such certificate, or (b) if all annual, special and specific assessments have not been paid, the amount of such assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date.

The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bond fide purchaser of, or Mortgagee on, the Unit in question.

5.10 **Specific Assessments.** The Association, by action of its Board, shall have the power to levy a Specific Assessment against any Unit or Units for fines or fees charged pursuant to the provisions of this Declaration or the Bylaws of the Association and/or to recover expenses incurred by the Association in providing benefits, services or items which are not provided to all Units, whether such expenses are incurred (by way of example and not limitation): (a) upon request of the Owner for specific items or services relating to the Unit, (b) as a consequence of the conduct of, or failure to perform by, the Owner(s) or their tenants, invitees or guests, (c) as a result of the intentional or negligent acts of an Owner or the family, guest, tenants, or invitees of an Owner, (d) due to the failure of an Owner of a Unit which shares a Twin Home Building to maintain, reconstruct, repair, etc., the exterior of such structure; or (e) in the event that the Association incurs costs and/or expenses in connection with the exercise of its right to establish compliance with the community standard.

A Specific Assessment shall be governed as fully as any other assessment by the provisions of Sections 5.1, 5.2, 5.6, 5.7 and 5.8, without limitation intended, of this Article. Each Owner agrees to be responsible for the negligent or intentional acts of such Owner's own activities, or those of such Owner's family, guests, tenants or invitees.

ARTICLE VI.

OPERATION AND MAINTENANCE

6.1 **Maintenance of Improvements on the Units; Establishment of Community Standard.** Each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Unit. The Association, through its Board of Trustees, or by vote of its Members, may establish a community standard which shall be applicable to the appearance of the Property and of the exteriors of structures on the Property; which standard each Owner shall make best efforts to meet or exceed. In any event, Owners shall be responsible to bring their unit into compliance with community standards. The Association shall have no obligation regarding maintenance or care of Units except as set forth in this Declaration.

6.2 **Operation and Maintenance by Association.** The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive and generally in good condition and repair. The Board of the Association shall be charged with establishing rules to control and regulate the use of the various common area facilities, features and amenities and the Common Area, generally. Accordingly, the rights of the Members shall be subject to the rules for control and regulation of the facilities, as they may be published, from time to time, by the Board on behalf of the Association.

The rights of the Members shall further be subject to the rights of the Association as provided herein (including, by way of example, the Association's right to maintain and provide regular

care to lawns and landscaping upon the Units as provided below). The Association, by a 2/3 vote of its Members may change the nature or quality of the facilities, features and/or amenities, or any rules adopted by the Board in respect to the use thereof. The expenses incurred by the Association for all such purposes shall be paid for with funds from the Common Expense Fund. The maintenance and operation shall include, but not necessarily be limited to, the following:

6.2.1 Maintenance and repair of the private roadways and sidewalks within the Properties;

6.2.2 Snow removal from the private roadways and as may be reasonably determined by the Association, from the sidewalks within the Properties;

6.2.3 Maintenance and regular care for the lawns and landscaping within the Common Areas and those portions of the lawns and landscaping upon the Units, including all trees, shrubs, grass, walks, etc., on or around the Units within the area which is designated on the Plat as "Homeowners Association Maintenance Area";

6.2.4 Maintenance and repair of perimeter fencing around the Property; and

6.2.5 Care and maintenance of the water drain/landscaping on the property adjacent to the entryway at the northeast corner of the Properties, for so long as the Association is provided with the temporary easement for use of the property.

6.3 **Maintenance of Exteriors.** Each Owner shall be charged with the duty to maintain, in a manner which is consistent with the community standard (that is, the prevailing aesthetic, character, quality and nature of the neighboring units), the exterior of each structure which is associated with that Owner's Unit, which maintenance may include, but shall not necessarily be limited to: paint, repair, replacement and care of roofs, gutters, downspouts, foundations, window wells, fences, exterior building surfaces, exterior doors and other exterior improvements. Such exterior maintenance shall also include glass surfaces and window screens or patios included on any Unit.

The Owners of Units which are attached are charged with sharing the responsibility for such exterior maintenance, in a manner to which they may agree in their reasonable discretion. The rights and duties of the Owners to maintain building exteriors shall be subject to the right of the Association after having first provided such Owner(s) with written notice and a reasonable opportunity to comply and to take appropriate action, including self-help, to establish compliance with the community standards for maintenance, and to charge all costs, together with interest at the maximum rate then allowed by law, up to eighteen (18%) percent per annum, to be assessed against the Owner and the Unit and collected as a specific assessment. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available. The Association shall have the right of entry to any Unit to perform emergency repairs and/or to do other work necessary for maintenance of the building exteriors. In the event that the need for maintenance or repair of the building exteriors is caused through the willful or negligent acts of its Owner(s), or through the willful or negligent acts of the family, guest, tenants, or invitees of the Owner(s) of the Unit needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become a part of the assessment to which such Unit is subject.

6.4 **Utilities.** The Owner shall pay for all utility services furnished to each Unit except utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. The Association shall pay such bills, which are not separately metered and charge an appropriate share to each Unit and Owner as part of the Common Expenses.

6.5 **Insurance.** The Association shall maintain in force insurance which meets the following minimum requirements:

6.5.1 **Hazard Insurance.** A "master" or "blanket" type policy of property insurance shall be maintained covering: Common Areas and fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or, regardless of whether or not such property is part of the elements of the Common Area, owned by the Association, and which are of a class typically encumbered by Mortgages held by FNMA or other similar institutional Mortgage investors; but excluding land, foundations, excavations, and other items normally not covered by such policies.

The Association may elect to maintain, or agree with the Unit Owners to maintain a master policy of hazard insurance covering one or more, up to all, of the Twin Home Buildings, including any improvements which are permanent parts of such Twin Home Buildings. If required by law, or to qualify for government loan guaranty or insurance, the Association may elect to maintain hazard insurance in a blanket or master policy covering all structures on all Units, including any improvements which are permanent parts of such structures (other than the interior content thereof). Provided that hazard insurance is not provided hereunder for all Units pursuant to the foregoing, the premiums on insurance for any Twin Home Buildings covered pursuant to the, above, shall be common expenses, but shall be assessed specially pursuant to Section 5.3 of this Declaration, to the Owners of the Units which are contained within the covered Twin Home Building(s). In the discretion of the Board, a policy of flood insurance may also be maintained covering all Common Areas within the Condominium Project (hereinafter "Insurable Property") in an amount deemed appropriate.

References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Condominium Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Condominium Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage.

The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance; or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one hundred percent of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy covering the Common Areas shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount. However, for losses related to individual Units that are covered by such a policy, the deductible related to each individual Unit shall be One Thousand Dollars (\$1,000.00). Funds to cover these deductible amounts shall be included in the Association's operating reserve account.

6.5.1.1 The name of the insured under each policy required to be maintained by the foregoing subsection 6.5.1 shall be the Association for the use and benefit of

the individual Owners. (Said Owners shall be designated by name, if required.) Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy in the percentage of common ownership. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

6.5.1.2 Each policy maintained in accordance with subsection 6.5.1 on a Twin Home Building shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Condominium Project is located. If FNMA (or FHLMC) is a holder of one or more Mortgagees on Units with in the condominium project such mortgage clause shall name such holder or its servicer of such Mortgagees as Mortgagee.

If FNMA's servicer is named as mortgagee in such mortgage clause, such servicers name shall be followed therein by the phrase "its successors and assigns." In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

6.5.1.3 Each policy required to be maintained in accordance with subsection 6.5.1, shall provide, if available, for the following: a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and the policy is primary in the event the Owner has other insurance covering the same loss.

6.5.1.4 Each policy required to be maintained in accordance with subsection 6.5.1 shall also contain or provide the following: (1) "Inflation Guard Endorsement", if available; (2) Building Ordinance or Law Endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction).

6.5.2 **Fidelity Bonds.** The Association may maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, Trustees and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Board may require the Manager to provide "blanket" fidelity bonds, for the Manager's officers, 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 the Board's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. A lesser amount of fidelity insurance coverage is acceptable for the Condominium Project so long as the Association and the Manager adhere to the following financial controls: (1) the Association or the Manager maintains separate bank accounts for the

working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association (2) the Manager maintains separate records and bank accounts for each Association that uses its services and the Manager does not have authority to draw checks on or to transfer funds from the Association's reserve account; or (3) two members of the Board must sign any checks written on the reserve account. The bonds required shall meet the following additional 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 serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds for the Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association, to any Insurance Trustee, and to each servicer of loans on behalf of FNMA.

6.5.3 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, public ways in the Condominium Project, and all other areas of the Condominium Project that are under the Association's supervision. Such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. If such policy does not include "severability of interest" in the terms the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association.

6.5.4 Insurance without Prejudice to Rights of Owners. All insurance provided pursuant to this Section 6.5 shall be provided without prejudice to the right of each Unit Owner to insure his or her own Unit for his or her benefit.

6.6 Individual Hazard Insurance for Units. Except in the event that the Association provides and maintains in force hazard insurance for all Units or for Twin Home Buildings pursuant to subsection 6.5.1 of this Declaration, it shall be the duty and obligation of the Owner of each Unit to obtain and maintain insurance against loss or damage by fire and other hazards for the building and improvements on the Owner's Unit. The insurance to be maintained shall meet or exceed the standards for such insurance, which are described in subsection 6.5.1, and shall accordingly, but without limitation, be in an amount not less than one hundred (100%) percent of current replacement cost of all improvements associated with such Unit, exclusive of land, foundations, excavation and other items normally excluded from coverage. Each such policy shall name the Association as an additional insured. The maximum deductible amount for such policy shall be One Thousand (\$1,000.00) Dollars.

ARTICLE VII.

DAMAGE OR DESTRUCTION

7.1 Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Association's insurer, in the event that damage or destruction occurs which is insured by an Association policy, as hereinafter provided. Acceptance of a deed by any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and

complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds from such policies shall be payable to the Association except as otherwise provided in this Declaration.

7.2 **Definition of Repair and Reconstruction.** Repair and reconstruction of the improvements as used herein means restoring the Property and improvements to the Property, which were the subject of the Association's obligation to insure, to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same boundaries as before.

7.3 **Procedure.** In the event all or any part of the Property covered by insurance written in the name of the Association is damaged or destroyed, the Association shall proceed as follows:

7.3.1 **Claims.** The Board or its duly authorized agent shall file and adjust all insurance claims. As soon as practicable after an event causing damage to or destruction of any part of the Condominium Project, the Board or its agent shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Condominium Project damaged or destroyed. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damage or destroyed part of the Condominium Project, such repair and reconstruction shall be carried out.

7.3.2. **Insufficient Insurance.** If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Condominium Project, such repair and reconstruction may nevertheless be carried out in the discretion of the Board. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Section 5.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

7.4 **Repair or Reconstruction.** If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Condominium Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Common Area shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction. Any restoration or repair of the Condominium Project shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

7.5 **Disbursement of Funds for Repair and Reconstruction.** If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 7.4 of this Article VII shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and

reconstruction, such balance shall be distributed to the Owners equally according to their interests therein.

7.6 **Owner's Insurance.** By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements as provided in Article VI, above; and further covenants and agrees that, in the event of damage to or destruction of structures on or comprising the Unit, the Owner of such Unit shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the Board. Alternatively, the Owner shall clear the Unit of all debris and ruins, and maintain the Unit in a neat and attractive, landscaped condition consistent with the community-wide standard. The Owner shall pay all costs which are not covered by insurance proceeds.

ARTICLE VIII.

CONDEMNATION

8.1 **Condemnation.** If at any time or times all or any part of the Condominium Project Common Area shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article VIII shall apply.

A voluntary sale or conveyance of all or any part of the Condominium Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. The Board shall represent the Association in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

8.2 **Proceeds.** All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "Condemnation Award") shall be made payable to the Association to be held in trust for Unit Owners and their First Mortgagees as their interests may appear, and shall be distributed by the Board of Trustees, on behalf of the Association as herein provided.

8.3 **Repair and Reconstruction.** Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article VII hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency or insurance proceeds shall not be applicable.

ARTICLE IX.

EASEMENTS

9.1 **Easement of Enjoyment.** Each Member shall have an equal non-exclusive right and easement of reasonable use, access and enjoyment in and to the Common Areas, except as limited herein. Each Owner (including Owners of Units constructed on the Additional Land) shall have an unrestricted right of ingress or egress to and from its Unit over and across such Common Areas, and the non-exclusive right to the reasonable use of all parking stalls within the Common Areas subject to any rules or restrictions adopted by the Board of Trustees.

Each Owner shall also have the exclusive right to use the Limited Common Area parking stalls which are designated for the Owner's Unit on the Plat. Each Owner shall also have the exclusive right to use and enjoy any other Limited Common Areas that may be designated for exclusive use by such Owner.

9.2 **Limitation on Easement.** A Member's equal undivided interest, right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

9.2.1 The right of the Association, after providing reasonable notice and an opportunity for a hearing given to a Member, to suspend a Member's voting right in the Association and a Member's right to the use of any recreational facilities included in the Common Areas (i) for any period during which an assessment on such Member's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

9.2.2 The right of the Association, for the protection of the interests of all Members and for the preservation of the facilities, to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

9.2.3 The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the property for purposes of providing police and fire protection, transporting school children; and providing other governmental or municipal service.

9.3 **Easements of Encroachment.** There shall be reciprocal appurtenant easements for encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area, and between adjacent Units due to the unintentional placement or settling or shifting of improvements constructed, reconstructed, or altered thereon to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. In the event the construction, reconstruction, repair, shifting, settlement or any other movement of any portion of the improvements of a Unit which shares a twin home causes any part of a Twin Home Building built in substantial accord with the boundaries for such Units as depicted on the Plat to encroach upon the adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement, or a predecessor in interest to such Person.

9.4 **Easements for Development, Maintenance, Utilities, Etc.**

9.4.1 There is hereby reserved to the Association, and to the designees of the Association (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Property (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating roads, walkways, pathways and trails; drainage systems; street lights and signage; and all utilities, including, but not limited to water, sewer, telecommunication, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Association owns or within easements designated for such purposes on the Plat.

9.4.2 There is hereby reserved to the Association, so long as the Association owns any property described on Exhibit "A" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Association, in connection with the orderly development of the Condominium Project.

9.4.3 Any damage to a Unit resulting from the exercise of the easements described in subsections 9.4.1 and 9.4.2 of this Section 9.4 shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not

extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit; and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

9.4.4 Easements for installation and maintenance of utilities are reserved as shown on the plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. A right of access to all such utilities is reserved to the Association and to all utility suppliers.

9.5 **Right of Entry.** The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons, to perform maintenance pursuant to this Declaration, and/or in good faith to inspect for the purpose of insuring compliance with this Declaration, the Articles and/or Bylaws.

Such right may be exercised by any member of the Board, the Association's officers, agents, employees and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single-family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

ARTICLE X.

GENERAL USE RESTRICTIONS

10.1 **Rules and Regulations.** The Association has the authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interest of the Owners. Fines may also be levied pursuant to a schedule of fines adopted by the Board and consistent with Utah law.

10.2 **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the rules, regulations and use restrictions applicable to Units. By ways of example, but not limitation, the Board of Trustees may establish, create and enforce, in its sole discretion: rules or restrictions relative to the use of the parking stalls/areas within the Common Areas designated for non-exclusive use; and/or a means by which the courts or other recreational facilities in the Common Area may be equitably scheduled for use by the Members. No, admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas; provided, however, that vending machines and similar devices approved by the Board may be made available within the Common Areas.

10.2.1 **Use of Common Areas. Guest Parking Stalls.** Guest Parking stalls located within the common areas are designed for non-exclusive use by guests and owners of Garden Village HOA members. Guest Parking stalls shall be for short term parking and are not to be utilized for permanent parking by either owners or their guests. Temporary parking is limited to (7) days in any one month period unless otherwise approved by the Board. The common Area parking stalls shall be used only in a manner consistent with the rules and restrictions described in the Covenants, Conditions and Restrictions for Garden Village of Holladay further described, but not limited to, Section 10.7.3.

10.3 **Use of Units.** Each Unit shall be used only for a single-family residence, according to then existing zoning and use guidelines. Residential structures shall be within the "Buildable Area". No Unit shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance covering the Common Areas or any other Unit.

10.4 **Leases.** Any lease agreement between an Owner and a lessee respecting a Unit shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws, and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such lease agreements shall be in writing and provide for a minimum initial term of up to one (1) year. Other than the foregoing, there is no restriction on the right of any Owner to lease his Unit. An Owner shall be responsible and liable for any damage to the Condominium Project caused by its tenant or any violation by such tenant of the provisions of this Declaration. It is further required that each lease agreement contain a clause naming the Association as a third-party beneficiary to the terms of the lease and, in the event that a tenant violates the terms of the governing documents of the Association and the Owner cannot or will not permanently remedy such violations, the Association may, after notice to the Owner, evict the tenant on the Owner's behalf.

10.5 **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall arise there from 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 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. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells, pet noises or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the Property without the prior written approval of the Board.

10.5.1 **Smoking.** Smoking in a Unit or in the Common Areas is a noxious and offensive activity creating a nuisance under this section of the Declaration. Accordingly, SMOKING IN A UNIT OR IN THE COMMON AREAS IS STRICTLY PROHIBITED, except in areas designated by rule from time to time, if any. In no case shall smoking be allowed within 25 feet of any building. Violation of this section by an Owner or any guest, resident, tenant, or occupant of a Unit shall subject the Owner of such Unit to a fine. Any Owner who rents or leases his or her Unit shall be responsible to pay any and all fines levied against his or her Unit for violations of this section by the renters or tenants in the Unit and shall be responsible for immediate abatement of any such nuisance(s).

10.5.2 **Pets.** Owners/members are restricted to ownership of two small pets which must be non-nuisance and not disturb occupants (Garden Village HOA Members). Dogs must be under a maximum weight of 20 pounds. No pet noise or other nuisance resulting from pets shall be permitted to exist or operate upon any part of the property, or to the occupants thereof. No pets may be maintained by owners other than in the owner's interior space, except for the very brief visits to the owner's immediate rear yards or to exit the property. Pets are not to be kept outside or in the owner's garage space. Any pet that is outside on the property must be kept on a leash and accompanied by the owner or a designee. An owner/designee is expected to immediately clean up after his or her pets and properly dispose of waste to prevent odors and unsightly and unsanitary conditions. The newly established policy regarding the maximum weight/number of pets does not apply to pets owned by Garden Village HOA owners/members, but shall take effect for any new pets living in Garden Village after 01/07/2010.

10.6 **Temporary and Other Structures**. No structures of a temporary nature, trailer, basement house, tent, shack, shed, garage, barn or other outbuildings, shall 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 Unit, it being the intention hereof that all structures erected and maintained on Units or within the Property shall be new construction of good quality, workmanship and material.

10.7 **Protection of Visual Aesthetics**. The Condominium Project has been designed to create and maintain an open feeling. Accordingly, the following provisions shall govern, together with such other, supplemental rules as may be adopted from time to time by the Association:

10.7.1 Fencing may be constructed only around the perimeter of the Property, and in the backyards of the Units at the perimeter/exterior of the Condominium Project. There shall be no fencing allowed for interior Units, except a forty-two (42) inch high privacy fence which may be allowed upon approval by the Association, through its Board, around the patios in the places designated on the Units.

10.7.2 No chain-link fence or other fencing shall be constructed on any part of the Property except in a manner and area approved by the Board, and provided, further, that any such fencing shall provide for access for maintenance in a manner approved by the Board.

10.7.3 No unsightly articles shall be permitted to remain on any part of the Property so as to be visible from any other Unit or the Common Areas. Without limiting the generality of the foregoing, trailers, mobile homes, motor homes, recreational vehicles, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view. It is specifically provided that the exclusive right to use Limited Common Areas shall not serve as a license to use such areas for purposes in contravention of the foregoing. (However, visitors to Members, who have small recreational vehicles, motor homes, trailers, etc., which fit in a regular parking stall, may utilize the parking stall on a temporary basis, which shall mean not more than seven (7) days in any one-month period.) No outside storage shall be permitted, unless specifically approved by appropriate resolution of the Board of Trustees. No motorized vehicles of any type that are not in operating condition shall be allowed to be kept in the Units' outside parking areas, including, without limitation, Limited Common Areas, for more than five (5) days. Furthermore, no vehicular repair shall be permitted in any outside parking areas, including 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 sandboxes, playground equipment, hot tubs, or permanent structures shall be placed on any Common Areas. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Unit except within an enclosed structure or when appropriately screened from view.

10.8 **No further Subdividing**. No Unit or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, the nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any Unit to more than one person to be held by them as tenants in common, joint tenants, or otherwise.

10.9 **Signs.** No sign of any kind shall be displayed to the public view without the approval of the Association, except such signs as may be used for the sale of Units and except such signs of customary and reasonable (small) dimensions as may be displayed from within a Unit advertising a Unit for sale or lease. Display of any "for sale" or "for lease" sign more than three (3) feet by two (2) feet shall require the prior written approval of the Association. A residential identification sign is permitted but should not exceed one (1) square foot in surface area.

Numbers on residences shall be located in a position clearly legible from the street, but not more than six (6) feet above main floor level. Personal signs or expressions, such as (but not limited to) exterior decorative flags, religious signs and political signs may not be displayed unless permitted by, and in that event only in a manner which is consistent with, a policy adopted by the Board of Trustees.

10.10 **No Hazardous Activities.** No activities shall be conducted on the Property and no improvements 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 or incinerators shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well- designed interior fireplace.

10.11 **Improvements and Alterations.** There shall be no excavation, construction or alteration (including a material alteration of color) which in any way alters the exterior appearance of any improvement within the Property or removal of any improvement within the Property (other than repairs or rebuilding) without the prior written approval of the Board. All structures shall comply with approved plans, and shall, at all times, be maintained in good condition and repair. The Master Plan provides for cohesively designed residential structures within the Condominium Project.

Accordingly, each of the residential structures shall be approved by the Board of Trustees of the Association, and must conform with the Master Plan, including the associated Plans and Profiles, utilizing one of the approved plans. It is expressly acknowledged that the Master Plan and its associated documents may be amended, from time to time, by the Association to add new plans or make changes to existing plans, subject to municipal approvals, if necessary.

It is acknowledged that, due to the relatively high water table which may exist on the land which is the subject of the Declaration, developers or Owners should consult applicable soils reports before constructing basements or below grade improvements to any structure on the Property.

10.12 **Rooftop Antennas.** No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any unit or elsewhere if exposed to view from any other Unit. Such antennas, if used, must be of the types that are installed within the natural building structure. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring Unit Owner's premises or home entertainment facilities or equipment. Provided, however, that the Association reserves the right and option to install cable service lines and antennas as needed throughout the Condominium Project in connection with its development. Furthermore, the Board may adopt additional rules regarding antennas and satellite dishes that are consistent with the FCC's Over the Air Reception Device Rule as it relates to condominiums.

10.13 **Architectural Control.** All structures shall be constructed in accordance with the types and architectural style described on the Master Plan. No building, 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 unless and until the plans and specifications showing the color, nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board.

10.14 **General Obligations.** Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration.

ARTICLE XI.

MORTGAGEE PROTECTION

11.1 **Notice of Action.** Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Unit number or address, any such First Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

11.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

11.1.2 Any delinquency in the payment of assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

11.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

11.1.4 Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 2 below or elsewhere herein.

11.2 **Matters Requiring Prior Eligible Mortgagee Approval.** Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty percent (60%) of the votes of the Units in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to:

11.2.1 Abandon or terminate the Declaration.

11.2.2 Add or amend any material provision of the Declaration, Articles, Bylaws or Plat, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

11.2.2.1 voting rights;

11.2.2.2 changes in the priority of assessment liens which changes negatively affect the rights of Mortgagees;

11.2.2.3 reallocation of interests in the Common Areas, or rights to their use; 11.2.2.4 hazard or fidelity insurance requirements;

11.2.2.4 imposition of any restrictions on Owner's right to sell or transfer his or her Unit;

11.2.2.5 any provisions that expressly benefit Mortgagees, insurers, or guarantors.

11.2.3 Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

11.3 **Availability of Condominium Project Documents and Financial Statements.** The Association shall be required to make available to Owners, lenders and the holders, insurers, and guarantors of the First Mortgages on any unit, current copies of the Declaration, Articles, Bylaws, and other rules governing the Condominium Project, and other books, records, and financial statements of the Association. The Association also shall be required to make available to prospective purchasers current copies of the Declaration, Bylaws, other rules governing the Condominium Project, and the most recent financial statement, if such is prepared. These documents shall be available for inspection, upon written request, during normal business hours or under other reasonable circumstances.

11.4 **Subordination of Lien.** The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee there under which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available there under, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a first Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

11.5 **Payment of Taxes.** In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in Article VI, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefore from the Association.

11.6 **Priority.** No provisions of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas.

ARTICLE XII.

ANNEXATION OR WITHDRAWAL OF PROPERTY

12.1 **Standards and Conditions.** In the event of an annexation, the additional expansions shall be subjected to the provisions of this Declaration. All future improvements to the condominium project shall be consistent with the initial improvements in terms of quality of construction. No expansion shall affect the validity of the condominium project nor shall it affect the validity of the title to the Units.

ARTICLE XIII.
MISCELLANEOUS

13.1 **Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as an Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing.

13.2 **Amendment of Declaration.** Except as provided elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote or written approval of at least sixty percent (60%) of the total votes of the Association. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Salt Lake County Recorder of an instrument executed by the Association. In such instrument an officer or Board member of the Association shall certify that the vote required by this Section for amendment has occurred.

Anything in this Article or Declaration to the contrary notwithstanding, the Board reserves the right to amend this Declaration to conform with FNMA or the VA or any other federal, state or local governmental agency with jurisdiction over the subject matter which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof.

Upon approval by the VA or by any other federal, state or local government agencies (the approval of which is required by applicable law), any such amendment shall be effected by the recordation by the Association of an amendment duly signed by or on behalf of the authorized officers of the Association with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Condominium Project and all persons having an interest therein.

13.3 **Rights of Action.** The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association. The prevailing party in any action to enforce this Declaration shall be entitled to its costs and reasonable attorney fees.

13.4 **Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to affect all of its purposes.

13.5 **Covenants to Run With Land.** This Declaration and all of the provisions hereof shall constitute covenants running with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association, all parties who hereafter acquire any interest in a Unit or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit shall comply with, and all interest in all Units or in the Common Areas shall be subject to,

the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

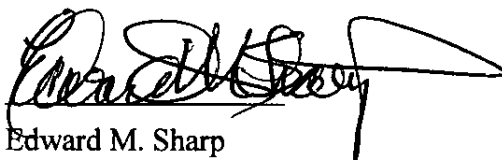
13.6 **Lists of Owners and Eligible Mortgagees.** The Board may maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Unit which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Board may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Board is otherwise advised.

13.7 **Development Agreement and Declaration and Grant of Reciprocal Easements.** Attached is **Exhibit "A"**, a plat map detailing the design of the "Right of Way" pertaining to the entrance, gate, roadway, etc. between the Garden Village Development and the Sky Pines Development. Also attached is **Exhibit "B"**, detailing a mutual Development Agreement with Sky Pines of Holladay H.O.A. (Sky Pines). The original Declarant and Sky Pines entered into an agreement that details the "Right of Way" that each party has pertaining to the entrance, gate, roadway, etc. This agreement is also binding upon the Owners of Garden Village as well as the Owners of Sky Pines, as **Exhibit "A"** contains. **Exhibit "C"** contains the Bylaws of the Association, as may be amended from time to time.

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

IN WITNESS WHEREOF, the Association has caused this First Amended and Restated Declaration to be executed by its duly authorized officers on the date evidenced below.

GARDEN VILLAGE OF HOLLADAY



By: Edward M. Sharp

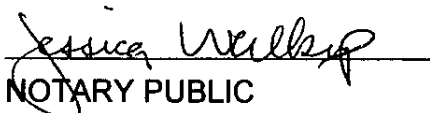
Its: President

STATE OF UTAH)

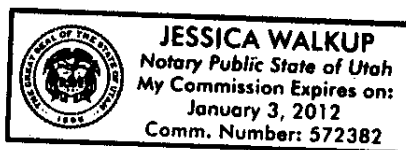
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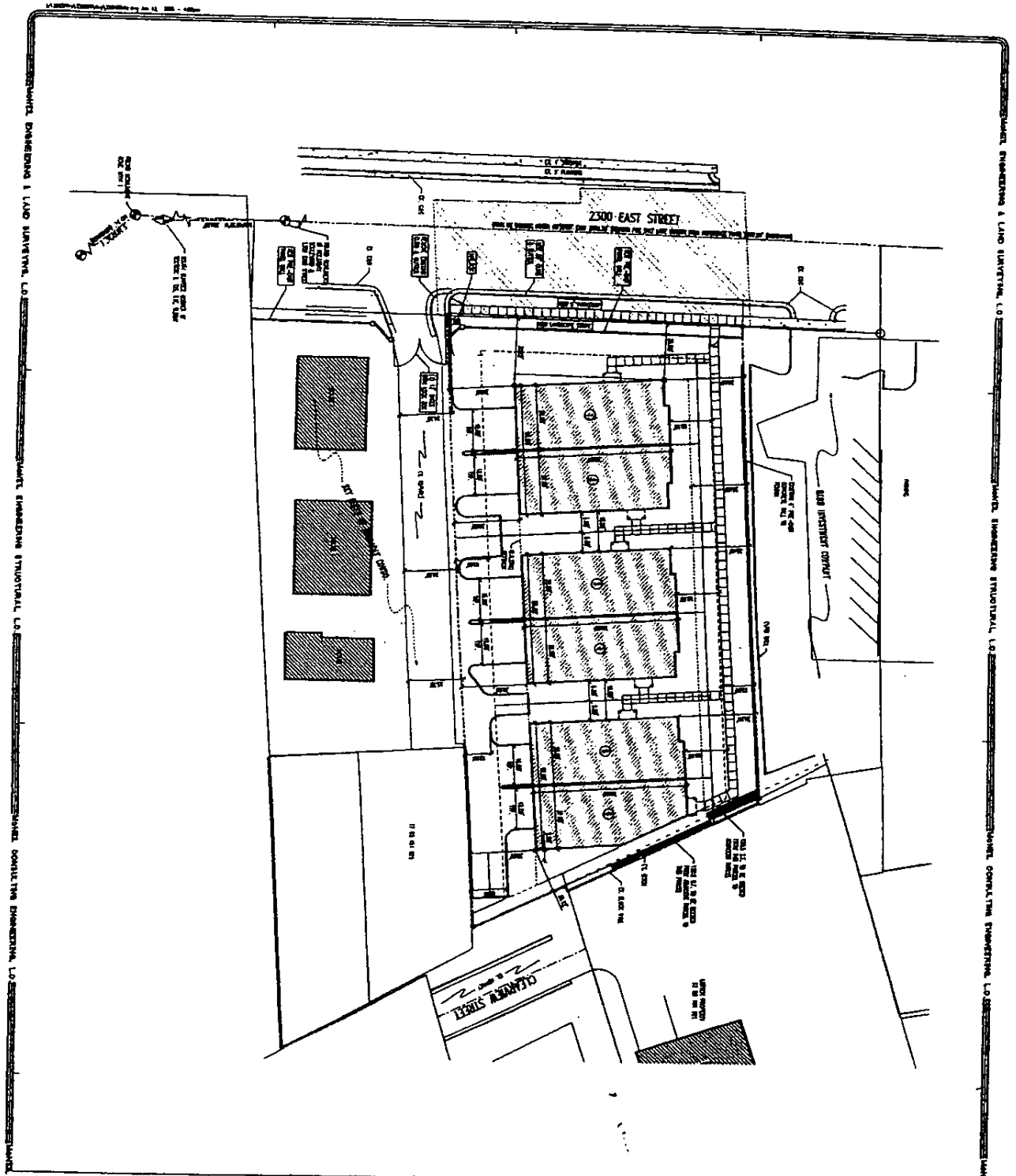
County of Salt Lake)

On this 25 day of October 2010, personally appeared before me Edward Sharp and who being by me duly sworn, did say that they are the authorized agents of the Garden Village of Holladay Condominiums to execute this First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Bylaws on behalf of the Association.



NOTARY PUBLIC





NOTES:

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
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19. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
20. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

McNeil Engineering and Land Surveying
 4567 Smith 7200 East
 Denver, CO 80231
 Phone: 303-751-1111
 Fax: 303-751-1112
 Website: www.mcneil-engineering.com

NO.	REVISION	DATE
1	ISSUED FOR PERMIT	10/15/11
2	ISSUED FOR CONSTRUCTION	10/15/11
3	ISSUED FOR RECORD	10/15/11

**GARDEN VILLAGE
 JAY RICE**
 4567 SMITH 7200 EAST

**McNEIL ENGINEERING
 AND LAND SURVEYING**
 PROFESSIONAL CIVIL ENGINEERING & LAND SURVEYING

Exhibit "B"

WHEN RECORDED, MAIL TO:

Martin K. Banks, Esq.
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, UT 84111

DEVELOPMENT AGREEMENT AND
DECLARATION AND GRANT OF RECIPROCAL EASEMENTS

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 22 day of February, 2006, by and between SKY PINES OF HOLLADAY HOMEOWNERS ASSOCIATION, INC., a Utah non profit corporation ("Sky Pines"), on behalf of the "Owners" as defined below, and JAR FAMILY INVESTMENT CO., LTD., a Utah limited partnership ("JAR"). Sky Pines, the Owners and JAR are sometimes collectively referred to as the "Parties" and individually as a "Party."

RECITALS:

A. The "Owners", as of the date of this Agreement are set forth below as signatories, and as defined in the Declaration of Condominium of Sky Pines of Holladay Condominiums and in the Bylaws of the Sky Pines of Holladay Homeowners Association, Inc. (together attached hereto as Exhibit "A"), are the owners of certain real property located in Salt Lake County, State of Utah, more particularly described in Exhibit "B" attached hereto (the "Sky Pines Property").

B. JAR is the owner of certain real property located in Salt Lake County, State of Utah, more particularly described in Exhibit "C" attached hereto (the "JAR Property").

C. The Sky Pines Property and the JAR property are adjacent properties located in the City of Holladay.

D. The Parties desire through this Agreement to grant to one another the right to use and to provide for the maintenance of that portion of their respective properties (the "Common Drive") more particularly depicted in the plat attached hereto as Exhibit "D", in accordance with the terms hereof.

E. The Common Drive is a driveway located partially within the Sky Pines Property and partially within the JAR Property and is used by both Parties for ingress and egress to their respective properties.

NOW, THEREFORE, in consideration of the parties' exchange of the grants of easements, covenants, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

AGREEMENT:

1. Grant of Easements for Ingress and Egress. Sky Pines hereby grants and conveys to the JAR a perpetual, non-exclusive easement for vehicular and pedestrian ingress and egress, over that portion of the Common Drive owned by Sky Pines for the use and benefit of JAR and JAR's residents, invitees, successors and assigns, over, upon and across the Common Drive, as the area now exists on the Sky Pines Property and as the same may from time to time be repaired, altered or modified. JAR hereby grants and conveys to Sky Pines a non-exclusive easement for vehicular and pedestrian ingress and egress over that portion of the Common Drive owned by JAR for the use and benefit of Sky Pines and Sky Pines' residents, invitees, successors and assigns, over, upon and across the Common Drive, as the area now exists on the JAR Property and as the same may from time to time be repaired, altered or modified.

2. Easements for Utilities. Any Party to this Agreement may use the Common Drive to reasonably locate or relocate public utilities or similar services, including, without limitation, natural gas, electricity, water, sanitary sewer, telephone, cable television, internet access and similar services (collectively, "Utilities") under, upon, over, across and through the Common Drive to service such Party's parcel. The installation or relocation of any Utilities within the Common Drive will be at the sole cost and expense of the requesting Party. Any Party installing or relocating Utilities within the Common Drive shall have such work completed within ninety (90) days and each Party agrees to minimize any interference with the other Party's use of the Common Drive during such time. Each Party agrees to restore the Common Drive to the condition that existed before the new Utilities were installed.

3. Entry Gate. The Parties agree that JAR will be responsible for paying for the initial costs and supervising the installation of a "double fly" automatic entry gate (the "Gate"), as designed by McNeil Engineering and Land Surveying, L.C., to be located at the entrance to the Common Drive.

4. New Pre-Cast Panel Wall and Landscape Strip. The Parties agree that JAR will be responsible for the costs associated with the removal of the existing wood wall located along 2300 East Street and for the installation of a new pre-cast panel wall, of uniform design, along the entire west property line of the Sky Pines Property and the JAR Property, together with the installation of a landscape strip, approximately four and a half feet wide, between the sidewalk and the wall.

5. Shared Mailbox Structure. The Parties agree that JAR will be responsible for the costs associated with and for the supplying and installing of a new, shared mailbox structure to be located at the entryway on the north corner of the Common Drive (as shown on Exhibit "D"), to service the residents of both the Sky Pines Property and the JAR Property.

6. Existing Trees on the North side of the Sky Pines Property. The Parties agree that JAR shall be responsible for the removal and transplanting (if possible) of all of the existing trees located along the north side of the Sky Pines Property line, including a large pine tree, to allow for the widening of the Common Drive as depicted in Exhibit "D".

7. Maintenance. The Parties agree to share in the cost of reasonable maintenance of the Common Drive and the Gate. Given that the JAR Property has six (6) home owners and the Sky Pines Property has five (5) home owners, JAR shall bear fifty-five percent (55%) of the reasonable maintenance costs for the Common Drive and the Gate, and Sky Pines shall bear forty-five percent (45%) of the reasonable maintenance costs for the Common Drive and the Gate; provided however, that, any Party that causes damage to the Common Drive or the Gate shall be responsible to repair such damage. The obligation of the Parties to maintain and keep in repair the Common Drive and the Gate shall, without limiting the generality thereof, include the following:

A. Maintaining and repairing, as necessary, the curb and gutter and the asphalt surfaces at such grades and levels that they may be used and enjoyed as contiguous and homogeneous common area and maintaining the surfaces in a level, smooth and evenly-covered condition with a quality, durable type of surfacing material for such use;

B. Removing all papers, debris, snow, ice, filth and refuse from the area to the extent reasonably necessary to keep the area in a neat, clean and orderly condition; and

C. Placing, operating, keeping in repair, and replacing, as necessary, any necessary or appropriate artificial lighting facilities and striping markers and lines as shall be reasonably as required, as determined by the parties.

The Parties further covenant and agree that the maintenance, repairs and costs associated with all other landscaping, drives, parking, walks and any other improvements located within their respective property boundaries shall be the responsibility of the respective property owners.

8. No Obstructions. Except to the extent necessary, and not to exceed ninety (90) days, for reasonable construction, for repair and maintenance, for traffic regulation and control, or to prevent a public dedication or the accrual of any rights to the public, neither Party shall cause any fence, gate, wall, barricade, or other obstruction, whether temporary or permanent in nature, to be constructed or situated upon the Common Drive which limits or impairs the free and unimpeded use of the rights-of-way and easements granted and confirmed herein, nor shall the Parties in any other way obstruct or interfere with the use of such easement.

9. Not a Public Dedication. The rights herein conveyed are private and are not for the use or benefit of the general public. Nothing herein contained shall be construed or deemed to be a dedication of any easement or right to, or for the use of, the general public.

10. Covenants Run With the Land. The Sky Pines Property and the JAR Property shall be held, transferred, improved, sold, conveyed, used and occupied subject to the rights and restrictions described herein, which rights and restrictions shall be covenants running with each property and enforceable against all subsequent owners thereof.

11. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Parties in the ownership or development of any portion of the respective properties. Notwithstanding the foregoing, a purchaser of either property or any portion thereof shall be responsible for performance of the obligations of the Party named herein who owned such property at the time of the execution of this Agreement. The Parties shall be entitled to transfer any portion of their respective properties subject to the terms of this Agreement without the consent or approval of the other Party. In the event of any transfer of all or any portion of a Party's property, the transferee shall be deemed to be a Party under this Agreement for all purposes under this Agreement with respect to that Property (or portion thereof) transferred.

12. JAR Warranty. JAR represents and warrants to Sky Pines that at the time of the execution and delivery of this Agreement, JAR is the sole owner of fee simple title to the JAR Property, and has full right, power, and authority to enter into and perform JAR's obligations under this Agreement.

13. Sky Pines Warranty. Sky Pines represents and warrants to JAR that the undersigned is the duly elected president of Sky Pines and that the signatories below represent all of the Owners of the Sky Pines of Holladay Condominiums at the time of the execution and delivery of this Agreement.

14. Rights Superior. The rights created by this Agreement shall be superior to any deed of trust, mortgage, or lease against the Sky Pines Property and/or the JAR Property.

15. Modification. The provisions of this Agreement may be modified from time to time or terminated at any time by the written agreement of all of the owners of the properties.

16. Term. The covenants, restrictions, rights, terms and provisions of this Agreement are perpetual.

17. Indemnification. The Parties (and each successor owner, respectively) covenant and agree, with respect to their own property, to comply with all laws, rules, regulations and requirements of all public authorities, and to indemnify, defend and hold each other harmless against all claims, demands, loss, damage, liabilities and expenses and all suits, actions and judgments (including but not limited to costs and attorney's fees) arising out of, related to, or caused by a Party's acts or omissions to act, use of, or occupancy of the Common Drive or the Gate or in any way related to any failure to maintain their

respective properties in a safe condition. The Parties (and each successor owner, respectively) shall give prompt and timely notice of any claim made or suit or action commenced which in any way directly or indirectly, contingently or otherwise, affects or might affect the other Party. Each Party shall have the right to participate in the defense of the same to the extent of its own interest.

18. Default. If there is a failure by any Party to perform, fulfill or observe any condition contained within this Agreement, continuing for thirty (30) days, or in situations involving potential danger to the health or safety of persons in, on or about or substantial deterioration of the Sky Pines Property or JAR Property, as the case may be, or any portion or any part thereof, in each case after written notice, the other Party may, at its election, cure such failure or breach on behalf of the defaulting Party. Any amount which the Party so electing shall expend for such purpose, or which shall otherwise be due by any Party, shall be paid to the Party to whom due, on demand, without contest, upon delivery of its invoice, together with interest at the lower of (1) the rate of eighteen percent (18%) per annum, or (2) the maximum rate permissible from time to time under applicable law, from the date of the expenditure or the date which it shall have become due to the date of payment in full.

19. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other, said consent not to be unreasonably withheld.

20. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Utah. This Agreement shall be recorded in the records of the County Recorder of Salt Lake County, Utah.

21. Notice. Notice shall be considered given hereunder when given in writing either (i) when delivered in person to the recipient named below, (ii) when delivered during normal business hours to a responsible person at the address indicated below in an envelope or container addressed by name and address to the person indicated below, (iii) three (3) business days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage prepaid, addressed by name and address to the person to indicated below, or (iv) after being transmitted by facsimile to the person indicated below at the facsimile number indicated below, with machine confirmation of satisfactory transmittal, as follows:

If to JAR, to:

JAR Family Investment Co. Ltd.
4625 So. 2300 E. Suite 201
Salt Lake City, 84117
Attention: Jay Rice
Facsimile: 801.277.2575

And to:

Martin K. Banks, Esq.
STOEL RIVES LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
Facsimile: 801.578.6999

If to Sky Pines, to:

SKY PINES OF HOLLADAY HOMEOWNERS ASSOCIATION, INC.
2631 East Lockhardt Road
Holladay, Utah 84117
Attention: Edah Shuttleworth
Facsimile: 801.428.2828

or to such other address or addresses as may from time to time hereafter be designated by either party.

22. No Waiver. Acceptance by either Party of any performance less than required hereby shall not be deemed to be a waiver of the rights of such Party to enforce all of the terms and conditions hereof. No waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

23. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument.

24. Entire Agreement. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the Parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, correspondence, representations and understandings of the Parties, oral or written, relative to the subject matter hereof shall be deemed to be superseded by and merged into this Agreement and shall be of no further force or effect. This Agreement may not be amended or modified except in writing executed by both of the parties hereto.

25. Attorney Fees. In the event of any action to enforce the provisions of this Agreement, the prevailing party shall be entitled to receive its costs and attorney fees.

26. Invalidity of Provision. If any provisions of this Agreement as applied to any Party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permitted by applicable law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.


27. Authority. The Parties warrant that the signatories below have authority to sign and execute this document on behalf of the entities they represent and that said entities are the proper parties to this Agreement, have duly authorized this Agreement, and that this Agreement is a legally enforceable obligation of such entities.

29. No Joint Venture or Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any similar relationship between the parties. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

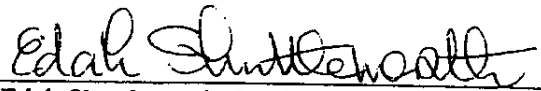
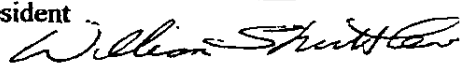
[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

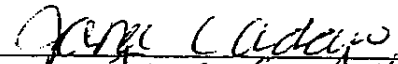
JAR FAMILY INVESTMENT COMPANY, LTD.,
a Utah limited partnership

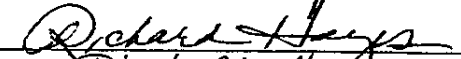
By 
Its General Partner

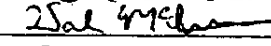
SKY PINES OF HOLLADAY HOMEOWNERS
ASSOCIATION, INC., a Utah non profit corporation

By 
Edah Shuttleworth, President


OWNERS:

By 
Name Jana C Adams
8322 Sky Pines Court

By 
Name RICHARD HAYES
2332 E. Sky Pines Ct.
JC UT 84417

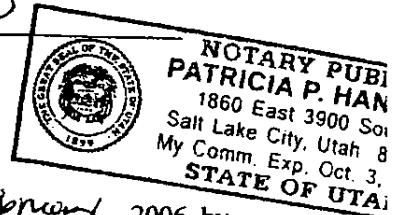
By 
Name DALE MCINTOSH
2326 SKY PINES CT
HOLLADAY UT 84117

By _____
Name _____

STATE OF Utah)
) : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 2 day of March, 2006, by Jay R. Rice, the General Partner of JAR FAMILY INVESTMENT CO. LTD., a Utah limited partnership.

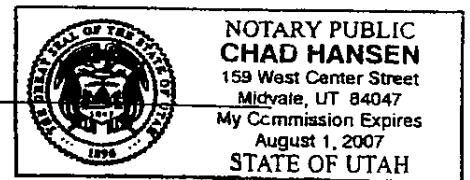
Patricia P. Hansen
NOTARY PUBLIC



STATE OF Utah)
) : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 22 day of February, 2006, by Edah Shuttleworth, the President of SKY PINES OF HOLLADAY HOMEOWNERS ASSOCIATION, INC., a Utah non profit corporation.

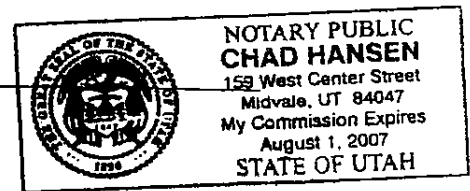
[Signature]
NOTARY PUBLIC



STATE OF Utah)
) : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 22 day of February, 2006, by Richard Scott Hays, a Unit Owner of SKY PINES OF HOLLADAY CONDOMINIUMS.

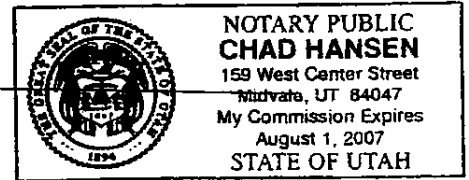
[Signature]
NOTARY PUBLIC



STATE OF Utah)
) : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 22 day of February, 2006, by Dale McIntosh, a Unit Owner of SKY PINES OF HOLLADAY CONDOMINIUMS.

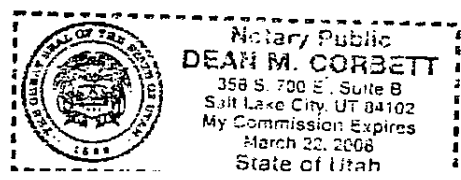
[Signature]
NOTARY PUBLIC



STATE OF Utah)
) : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 23 day of Feb, 2006, by Lani C Adams, a Unit Owner of SKY PINES OF HOLLADAY CONDOMINIUMS.

[Signature]
NOTARY PUBLIC



BYLAWS
GARDEN VILLAGE OF HOLLADAY
HOMEOWNERS ASSOCIATION
(EXHIBIT "C")

ARTICLE 1
PLAN OF TOWNHOUSE OWNERSHIP

1.1 **Name and Location.** These are the Bylaws of the Garden Village of Holladay Homeowners Association (the "Association"). Garden Village of Holladay is community of townhouse Owners that has been subjected to Declaration of Covenants, Conditions and Restrictions for Garden Village of Holladay, initially recorded as Entry No. 9812042, in Book 9335, Pages 8802-8835, Recorder's Office of Salt Lake County, Utah (the "Declaration"). These Bylaws are initially applicable to the recorded plat of GARDEN VILLAGE OF HOLLADAY, recorded in the Recorder's Office of Salt Lake County, Utah in Plat Book 2006P, Page 235, ("Garden Village of Holladay").

1.2 **Principal Office.** The principal office of the Association shall be located at 2333 Sky Pines Court, Holladay, Utah 84117 or such other office as may designated by the Board of Trustees from time to time.

1.3 **Purposes.** This Association is formed to serve as a means through which the Owners may take action with regard to the administration, management and operation of Garden Village of Holladay, the property and the condominiums therein. The affairs of the Association shall be through an elected Board of Trustees.

1.4 **Applicability of Bylaws.** The Association, all Owners and all persons using the Property shall be subject to these Bylaws and to all rules and regulations that may be adopted pursuant to the Declaration and these Bylaws.

1.5 **Composition of Association.** The Association shall be composed of all Owners, and the Association itself to the extent it owns any condominium of the Property

1.6 **Incorporation of Association.**

(a) The Association shall be incorporated under the Utah Revised Nonprofit Corporation Act. The Articles of Incorporation of the Association shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the Bylaws of the incorporated association. The name of the association shall be "Garden Village of Holladay Homeowners Association, Inc."

(b) In the event the incorporated Association shall at any time be dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event, all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, which vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any such successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the incorporated association as if they had been made to constitute the governing documents of the unincorporated association.

1.7 **Definitions.** The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

ARTICLE 2

MEETING OF ASSOCIATION

2.1 **Place of Meeting.** The Association shall hold meetings at such suitable place convenient to the Owners as may be designated by the Board of Trustees from time to time.

2.2 **Annual Meetings.** The first annual meeting of the Owners shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Owners shall be held annually at a time and place within the State of Utah selected by the Board of Trustees of the Association.

2.3 **Special Meetings.** Special meetings of the Owners may be called at any time by the president or by the Board of Trustees, or upon written request of the at least thirty percent (30%) of the Owners stating the purpose of the meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

2.4 **Notice of Meetings.** Written notice of each meeting of the Owners shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, by electronic mail with acknowledgement of receipt requested, or by personal contact at least fifteen (15) days but not more than sixty (60) days before such meeting to each Owner entitled to vote thereat, addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. The notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

2.5 **Voting.** Each Owner shall be allocated one vote in the affairs of the Association as provided in the Section 3.2 of the Declaration. The Board of Trustees shall be entitled to vote on behalf of any condominium which has been acquired by or on behalf of the Association, except the Board of Trustees shall not be entitled to vote such condominium in any election of Trustees.

2.6 **Proxies, Absentee Ballots and Rights of Mortgagees.**

(a) **Proxies**

(1) A vote may be cast in person or by proxy. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by resolution of the Board of Trustees.

(2) No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution.

(3) No proxy shall be valid if it purports to be revocable without notice.

(4) An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association or to the Board of Trustees if a vote is being conducted by written ballot in lieu of a meeting pursuant to Section 2.12 below.

(5) Every proxy shall automatically cease upon sale of the condominium.

(b) **Absentee Ballots.** At the discretion of the Board of Trustees, a vote may be cast by absentee ballot.

(c) **Mortgage Rights.**

(1) An Owner may pledge or assign the Owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the Owner is entitled hereunder and to exercise the Owner's voting rights from and after the time that the Mortgagee shall have given written notice of the pledge or assignment to the Board of Trustees.

(2) Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

2.7 **Fiduciaries and Joint Owners.**

(a) **Fiduciaries.** An executor, administrator, guardian, or Trustee may vote in person or by proxy, at any meeting of the Association with respect to any Condominium owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Condominium in such capacity.

(b) **Joint Owners.** Whenever any condominium is owned by two or more persons jointly, according to the records of the Association, the vote of the condominium may be exercised by any one of the Owners then present, in the absence of protest by a co-Owner. In the event of a protest, no one co-Owner shall be entitled to vote without the approval of all co-Owners. In the event of disagreement among the co-Owners, the vote of the condominium shall be disregarded completely in determining the proportion of votes given with respect to the matter.

2.8 **Quorum of Owners.**

(a) Except as otherwise provided in the Declaration or these Bylaws, at any meeting of the Association, Owners holding fifty percent (50%) of the voting rights, present in person or by proxy, or absentee ballot if permitted under Section 2.6(b) above, shall constitute a quorum.

(b) The subsequent ratification of an Owner, in the action taken at a meeting shall constitute the presence of the person for the purpose of determining a quorum. When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

(c) If any meeting of owners cannot be organized because of a lack of quorum, the owners who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present. For each adjourned meeting, the quorum requirement shall be reduced by one-half (1/2) of the quorum requirement of the previous meeting. The adjournment provisions of this subsection (c) do not apply to action by written ballot in lieu of a meeting under Section 2.12 below.

2.9 **Binding Vote.** The vote of the holders of more than fifty percent (50%) of the voting rights present, in person or by proxy or absentee ballot if permitted under Section 2.8(b) above, at a meeting at which a quorum is constituted shall be binding upon all Owners for all purposes except where a higher percentage vote is required by law, the Declaration, or these Bylaws.

2.10 **Order of Business.** The order of business at annual meetings of the Association shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;

- (e) Reports of committees, if any;
- (f) Election of officers, which together shall constitute the Board of Trustees;
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

2.11 **Meeting Procedure.** Unless other rules of order are adopted by resolution of the Board of Trustees:

(a) Meetings of the Association shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.

(b) A decision of the Association may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(c) A decision of the Association is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

2.12 **Action By Written Ballot In Lieu of a Meeting.**

(a) **Action By Written Ballot.** At the discretion of the Board of Trustees, any action, except election or removal of Trustees, that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Owner that is entitled to vote on the matter not less than twenty (20) days prior to the date on which the ballots must be received by the Association in order to be counted.

(b) **Form and Effect of Ballot**

(1) The written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(2) A written ballot may not be revoked.

(c) **Information Required in Ballot Solicitations.** All solicitations for votes by written ballot must:

(1) State the number of responses needed to meet any applicable quorum requirements and the total percentage of votes needed for approval.

(2) Specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of the following unless the vote is pursuant to the secrecy procedure described in Subsection (d) of this section:

(A) The date on which the Association has received a sufficient number of approving ballots to pass the proposal;

(B) The date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage; or

(C) A date certain on which all ballots must be returned to be counted.

(d) **Secrecy Procedure.** The Board of Trustees may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by:

(1) A secrecy envelope;

(2) A return identification envelope to be signed by the Owner; and

(3) Instructions for marking and returning the ballot.

(e) Determination of Vote. The outcome of a vote by written ballot in lieu of a meeting shall be determined by the Board of Trustees within forty-eight (48) hours of the deadline for return of ballots, or in the event the ballot return date is postponed, within forty-eight (48) hours of the postponed date. Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

(1) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of Owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected.

(2) If approval of a proposed action otherwise would require a meeting at which a specified percentage of Owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required percentage has not been met.

(3) Except as provided in Subsection 2.12(e)(4), votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

(4) Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

(f) Owner Notification of Ballot Results. Each Owner shall be notified within ten (10) days after the ballots have been counted, by mail or other delivery of written notice, of the results of the ballot meeting or that a quorum of ballots was not returned.

2.13 Action Without a Meeting.

(a) Any action that may be taken at any annual, regular or special meeting of the Association, may be taken without a meeting and without solicitation of written ballots pursuant to Section 2.12 above, if the action is taken by all of the Owners entitled to vote on the action.

(b) The action must be evidenced by one or more written consents describing the action taken, signed by all of the Owners entitled to vote on the action, and delivered to the Association for inclusion in the minutes or filing with the Association records.

(c) Action taken under this section is effective when the last Owner signs the consent, unless the consent specifies an earlier or later effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

ARTICLE 3

BOARD OF TRUSTEES; SELECTION; TERM OF OFFICE

3.1 Number and Qualification

(a) The affairs of the Association shall be governed by a Board of Trustees composed of three (3) Trustees as provided in Section 3.2 below.

(b) All Trustees must be an Owner or the co-Owner of a condominium. However, multiple Owners of the same condominium may not serve as Trustees simultaneously. An officer or employee of a corporation, a partner of a partnership, a trustee of a trust, a personal representative of an estate or an employee of a trust or estate, may serve on the Board if the corporation, partnership, trust or estate owns a condominium.

3.2 **Election and Term of Office.**

(a) The Owners shall elect a president, a vice president, and a secretary to serve for a term determined by the Owners, which officers together make the Board of Trustees.

(b) Nomination for officers and election shall be as specified in Article 4 below.

(c) All Trustees shall hold office until their respective successors shall have been elected by the owners.

3.3 **Vacancies.** Vacancies on the Board of Trustees will be filled by a vote of the Association at the next meeting.

3.4 **Removal of Trustees**

(a) At any annual or special meeting, other than a meeting by written ballot conducted pursuant to Section 2.14 above, any one or more of the Trustees, may be removed, with or without cause, by a majority of the Owners present in person or by proxy, at a duly constituted meeting. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any director whose removal has been proposed by the Owners may be given an opportunity to be heard at the meeting.

(b) The Board of Trustees, pursuant to Section 6.2(c) below, may declare the office of a Trustee to be vacant in the event such Trustee is absent from three (3) consecutive regular meetings of the Board of Trustees. The vacancy shall be filled as provided in Section 3.4 above.

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

3.6 **Action Taken Without A Meeting.** In the case of any emergency, the Trustees shall have the right to take any action in the absence of a meeting which they could take a regular or special meeting by obtaining the written approval of all the Trustees in accordance with U.C.A. 16-6a-813. Any action so approved shall have the same effect as though taken at a meeting of the Trustees.

ARTICLE 4

NOMINATION AND ELECTION OF TRUSTEES

4.1 **Nomination.** Nominations for election of Trustees may be made from the floor at the annual meeting or any special Owners meeting held pursuant to Section 3.3 above. The Owners shall make as many nominations for election to the Board of Trustees as it shall in its discretion determine, but not less than the number of vacancies.

4.2 **Election.** At the Election of Trustees the owners or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE 5

MEETINGS OF TRUSTEES

5.1 **Regular Meetings.** Regular meetings of the Board of Trustees shall be held at such place and hour as may be fixed from time to time by resolution of the Board.

5.2 **Special Meetings.** Special meetings of the Board of Trustees shall be held when

called by the president of the Association, or by any two (2) Trustees, after not less than three (3) days notice to each director by mail, including electronic mail if approved by the Board, telephone, or telegraph. The notice must state the time, place, and purpose of the meeting.

5.3 **Meeting Procedure.** Unless other rules of order are adopted by resolution of the Board of Trustees:

(a) Meeting of the Board of Trustees shall be conducted according to the last edition of Robert's Rules of Order published by the Robert's Rules Association.

(b) A decision of the Board of Trustees may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(c) A decision of the Board of Trustees is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

5.4 **Open Meetings; Executive Sessions.**

(a) **Open Meetings.** Except as provided in Subsection (b) of this section, all meetings excepting electronic meetings of the Board of Trustees shall be open to condominium Owners. However, no Owner shall have a right to participate in the Board of Trustees meeting unless the Owner is also a Trustee. The president shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting.

(b) **Executive Sessions.** In the discretion of the Board, the following matters may be considered in executive session:

(1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;

(2) Personnel matters, including salary negotiations and employee discipline;

(3) The negotiation of contracts with third parties;

(4) Collection of unpaid assessments; and

(5) Modifications of the Association Rules and Regulations.

(c) **Executive Session Procedure.**

(1) Except in the case of an emergency, the Board of Trustees shall vote in an open meeting whether to meet in executive session. If the Board votes to meeting in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

(2) A contract or an action considered in executive session does not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes.

5.5 **Meetings by Telephonic or Electronic Communication.** Meetings of the Board of Trustees may be conducted by telephonic communication or by the use of a means of communication that allows all Trustees participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

5.6 **Quorum and Acts.** At all meetings of the Board of Trustees a majority of the

existing Trustees shall constitute a quorum for the transaction of business and the acts of the majority of the Trustees present shall be the acts of the Board of Trustees. If, at any meeting of the Board of Trustees, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business that might have been transacted at the meeting as originally called may be transacted without further notice.

ARTICLE 6

POWERS, RIGHTS AND DUTIES OF THE BOARD OF TRUSTEES

6.1 **General Powers and Duties.** The Board of Trustees shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

6.2 **Specific Powers.** In addition to powers imposed by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board of Trustees shall have the power to:

(a) Adopt and publish rules and regulations governing the use of the Common Area, including any improvements and amenities located thereon, and the personal conduct of the owners and their guests thereon, and to establish penalties for the infraction thereof.

(b) Pursuant to Section 5.1 of the Declaration, suspend the voting rights and right to use of any recreational facilities located on any Common Area of a owner during any period in which such owner shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations or any provisions of the Declaration.

(c) Declare the office of a Trustee to be vacant in the event such Trustee shall be absent from three (3) consecutive regular meetings of the Board of Trustees.

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

6.3 **Specific Duties.** In addition to duties imposed by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board of Trustees shall have the duty to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Owners, or at any special meeting when such a statement is requested in writing by twenty-five percent of the Owners who are entitled to vote;

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

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

(1) Fix the amount of the Annual Assessment against each condominium at least thirty (30) days in advance of each Annual Assessment period;

(2) Send written notice of each change in Assessment to every Owner subject thereto at least thirty (30) days in advance of each Annual Assessment period;

(3) Foreclose the lien against any condominiums for which Assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner personally obligated to pay the same;

(d) Issue, or cause an appropriate officer to issue, upon demand by any Owner, a certificate setting forth whether or not any assessment has been paid in accordance with Section 7.20 of the Declaration. A reasonable charge may be made by the Board for the issuance of these certificates.

(e) Procure and maintain adequate liability and hazard insurance on property Owned by the Association or maintained by the Association if required by the Declaration or any supplemental declaration annexing Additional Property to the Community.

(f) Cause all officers or employees having fiscal responsibilities to be bonded as it may deem appropriate.

(g) Cause to be maintained the Common Area and any other areas shown on the Plat that may be owned by governmental entities who are not maintaining such areas and any other property required to be maintained by the Declaration or any supplemental declaration annexing Additional Property to the Community.

(h) Establish and maintain the financial accounts of the Association.

(i) Establish a budget for payment of all Common Expenses of the Association, and institute and maintain a voucher system for payment, which shall require a sufficient number of signatories thereon as may be reasonably necessary to prevent any misuse of the Association's funds.

(j) Prepare and distribute annual financial statements for the Community to each Owner.

(k) At least annually, cause the review of the insurance coverage of the Association as provided in the Declaration.

(l) File the Annual Report, if required, with the Utah Secretary of State, Department of Corporations and Commercial Code.

(m) Prepare or cause to be prepared and filed any required income tax returns or forms.

(n) In the Boards' discretion, appoint an Architectural Review Committee, as provided in the Declaration. In addition, the Board of Trustees shall appoint such other committees as deemed appropriate in carrying out its purpose.

ARTICLE 7

OFFICERS AND THEIR DUTIES

7.1 Designation and Qualification.

(a) Designation. The principal officers of the Association shall be a president, a vice-president, and a secretary.

(b) Qualifications. The president, vice-president and secretary together are the Board of Trustees.

(c) Multiple Offices. No person shall simultaneously hold more than one (1) of any of the offices specified in subsection (a) of this section.

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

7.2 Election and Vacancies. The officers of the Association are to be elected, as necessary, by the Owners at any meeting of the owners held in accordance with Section 2.5 above. If any office becomes vacant by reason of death, resignation, removal, disqualification or

any other cause, the Board of Trustees shall elect a successor to fill the unexpired term at any meeting of the Board of Trustees.

7.3 **Resignation.** Any officer may resign at any time by giving written notice to the Board, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 **Removal of Officers.** Officers shall hold office at the pleasure of the Board of Trustees. Upon an affirmative vote of a majority of the Trustees any officer may be removed, either with or without cause.

7.5 **Compensation of Officers.** No officer may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a binding vote of the Owners. The Board of Trustees may fix any compensation to be paid to any officers who are not also Trustees.

7.6 **Duties of Officers.** The duties of the officers are as follows:

(a) **President.** The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board of Trustees. The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments. The President shall have responsibility for the Association's funds and securities not otherwise held by a managing agent, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The President shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board of Trustees and disbursing funds as directed by resolution of the Board.

(b) **Vice-President.** The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) **Secretary.** The secretary shall keep the minutes of all meetings of the Board of Trustees and the minutes of all meetings of the Association, have charge of such books and papers as the Board of Trustees may direct, and in general, perform all of the duties incident to the office of secretary.

ARTICLE 8

INDEMNIFICATION OF OFFICERS AND TRUSTEES

Each officer and director of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by law against expenses and liabilities reasonably incurred by him or her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a director or officer of the Association. The foregoing right to indemnification shall be exclusive of any other rights to which the director or officer or person may be entitled by law or agreement or vote of the Owners or otherwise.

ARTICLE 9

RECORDS AND AUDITS

The Association shall maintain within the State of Utah all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act in the manner prescribed by a resolution adopted by the Board of Trustees.

9.1 General Records

(a) The Board of Trustees and managing agent or manager, if any, shall keep detailed records of the actions of the Board of Trustees and managing agent or manager; minutes of the meetings of the Board of Trustees; and minutes of the meeting of the Association.

(b) The Board of Trustees shall maintain a Book of Resolutions containing the rules, regulations, and policies adopted by the Association and Board of Trustees.

(c) The Board of Trustees shall maintain a list of Owners and a list of all Mortgagees of condominiums. The list of Owners shall specify whether the Owner is an Owner in Good Standing or a Suspended Owner.

(d) The Association shall retain within this state all records of the Association for not less than the period specified in applicable law, except that proxies and ballots must be retained for one year from the date of determination of the vote.

9.2 Records of Receipts and Expenditures The Board of Trustees or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Community, itemizing the maintenance and repair expenses of the Common Area or Association property and any other expenses incurred.

9.3 Assessment Roll. Records shall be maintained showing the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

9.4 Financial Reports and Audits.

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board of Trustees to all Owners and to all mortgagees of condominiums who have requested the same in writing within ninety (90) days after the end of each fiscal year.

(b) From time to time the Board of Trustees, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and Mortgagees of condominiums. At any time any Owner or Mortgagee may, at such Owner's or Mortgagee's own expense, cause an audit or inspection to be made of the books and records of the Association.

9.6 Inspection of Records by Owners.

(a) Except as otherwise provided in Section 9.7 below, all records of the Association shall be reasonably available for examination by an Owner and any Mortgagee of a condominium pursuant to rules adopted by resolution of the Board of Trustees.

(b) The Board of Trustees shall maintain a copy, suitable for the purposes of duplication, of the following:

(1) The Declaration, Bylaws and any amendments in effect or supplements thereto, and rules and regulations of the Association.

(2) The most recent financial statement prepared pursuant to Section 9.5 above.

(3) The current operating budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an Owner, shall furnish the requested information required to be maintained under Subsection (b) of this section.

(d) The Board of Trustees, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

9.7 **Records Not Subject to Inspection.** Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

(a) Personnel matters relating to a specific identified person or a person's medical records.

(b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.

(c) Communications with legal counsel that relate to matters specified in Subsections (a) and (b) of this section.

(d) Disclosure of information in violation of law.

(e) Documents, correspondence or management or board reports compiled for or on behalf of the Association or the Board of Trustees by its agents or committees for consideration by the Board of Trustees in executive session held in accordance with Section 5.4(b) above.

(f) Documents, correspondence or other matters considered by the board of Trustees in executive session held in accordance with Section 5.4(b) above.

(g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the association.

9.8 **Notice of Sale or Mortgage.** Immediately upon the sale or Mortgage of any condominium, the Owner shall promptly inform the secretary or manager of the name and address of the purchaser, vendee or Mortgagee.

ARTICLE 10

ASSESSMENTS

10.1 Each Owner is obligated to pay to the Association Assessments specified in the Declaration which are secured by a continuing lien upon the condominium against which the Assessment is made.

10.2 Any Assessments or portions thereof which are not paid when due shall be delinquent and subject to the remedies specified in Article V of the Declaration. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the condominium, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment.

10.3 No Owner may waive or otherwise escape liability for the Assessment provided for in the Declaration by non-use of the Common Area or abandonment of the Owner's condominium.

ARTICLE 11
AMENDMENTS

11.1 **How Proposed.** Amendments to the Bylaws shall be proposed by either a majority of the Board of Trustees or by Owners holding at least thirty percent (30%) of the voting rights. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon.

11.2 **Adoption.** Amendments may be approved by the Association at a duly constituted meeting or meeting by written ballot in lieu of a meeting conducted pursuant to Section 2.14 above for such purpose. Subject to Section 11.3 and 11.4 below, a vote of at least sixty percent (60%) of the Owners participating in a properly convened meeting, held for such purpose, is required for approval of any amendment.

11.3 **Corrections and Regulatory Amendments.** Notwithstanding the provisions of Sections 11.2 of this section and any other provision of these Bylaws, the Board shall have the right to amend these Bylaws in order to:

- (a) Correct obvious typographical, mathematical or similar errors.
- (b) Comply with the requirements of any applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States, the State of Utah, Salt Lake County, Holladay City.

11.4 **Execution and Recording.** An amendment shall not be effective until certified by the president and secretary of the Association as being adopted in accordance with these Bylaws, acknowledged and recorded with the Recorder's Office of Salt Lake County, Utah.

11.5 **Challenge to Validity.** No action to challenge the validity of an adopted amendment may be brought more than one (1) year after the amendment is recorded.

ARTICLE 12
MISCELLANEOUS

12.1 **Notices.**

(a) **Association.** All notices to the Association or the Board of Trustees shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board of Trustees may hereafter designate from time to time.

(b) **Owners.**

(1) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Board of Trustees, or if no address has been designated, then to the Owner's condominium.

(2) If a condominium is jointly owned or the condominium has been sold under a land sale contract, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the condominium shall be sufficient.

12.2 **Waiver, Precedent and Estoppel.** No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be

deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

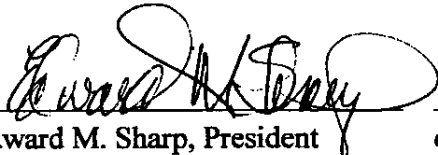
12.3 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

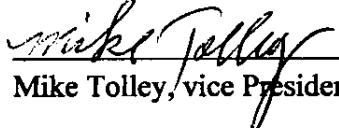
12.4 **Fiscal Year.** The fiscal year of the Association shall be determined by the Board in its discretion.

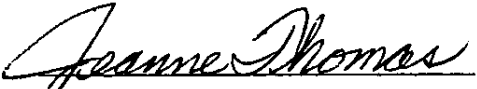
12.5 **Conflicts.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

WE, THE UNDERSIGNED, do hereby certify that we are the duly elected Board of Trustees of the Garden Village of Holladay Homeowners Association, Inc., a Utah corporation, and that the foregoing By-Laws constitute the original By-Laws of said Corporation, as unanimously adopted by the Homeowners of the Association.

IN WITNESS WHEREOF, we, being all of the Trustees of the Garden Village of Holladay Homeowners Association, have hereunto set our hands.


Edward M. Sharp, President 10/18/2010
dated


Mike Tolley, vice President 10/21/2010
dated


Jeanne Thomas, Secretary 10-18-2010
dated