

144

After recording return to:

Paul M. Johnson
Bennett Tueller Johnson & Deere
3865 South Wasatch Blvd, Suite 300
Salt Lake City, UT 84109

ENT 121678:2003 PG 1 of 44
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2003 Aug 04 2:39 pm FEE 97.00 BY LJ
RECORDED FOR GABLES & GREEN & GREEN

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS
(with Owner Association Bylaws)**

**THE GABLES AT GRANDVIEW
PLANNED DEVELOPMENT**

Provo, Utah County, Utah

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS for THE GABLES AT GRANDVIEW PLANNED DEVELOPMENT (the "**Declaration**") is made on this 25 day of June, 2003, by Gables & Green & Green, Limited Liability Company, a Utah limited liability company ("**Declarant**") in its capacity as the owner and developer of The Gables at Grandview Planned Development in Provo, Utah.

RECITALS:

A. Declarant is the owner of certain real property in Provo, Utah County, Utah, which is set forth and described on Exhibit A, attached hereto and made a part hereof (the "**Property**").

B. Declarant is developing on the Property a planned residential development to be known as The Gables at Grandview (the "**Project**") pursuant to The Gables at Grandview Development Plan (the "**Development Plan**") approved by Provo City (the "**City**"), Utah. The Project will contain a variety of single family residential units. The Project will also contain recreational amenities and common areas in the form of Common Elements which are intended to be used and enjoyed by the Owners pursuant to the provisions of this Declaration.

C. In furtherance of a common plan of development for the Project, Declarant intends to adopt the provisions of this Declaration for the benefit of the Property and any Additional Property, all of which shall be developed subject hereto and all of which shall run with the title to the Property. In addition, Declarant has created or will create prior to the conveyance of fee title to any Lot or Unit The Gables at Grandview Owners Association (the "**Association**") to which Declarant in due course will delegate and assign (1) the powers of owning, maintaining and administering the Common Elements, (2) the duties of administering

and enforcing this Declaration, and (3) the duties of collecting and disbursing the assessments and charges hereinafter created in connection with the operation, maintenance, repair and replacement of the Common Elements and the functions and obligations of the Association created hereunder.

ARTICLE 1

GENERAL

1.01 **General Purposes.** Declarant intends to develop the Project as a neighborhood having single-family and recreational uses. Declarant intends that this Declaration establish and provide for the continued maintenance of the Project as an attractive and desirable residential community.

1.02 **Densities.** The densities for the Project (including any Additional Property) are generally defined in the Development Plan and may be further set forth in one or more Development Agreements between Declarant and the City as the Project progresses.

1.03 **Annexation by Declarant.** Declarant may, from time to time, and without the consent of any Owners, expand the Project subject to this Declaration by the annexation of all or part of the lands constituting the Additional Land. No amendment to this Declaration will be required to effect such action. Subject to compliance with the conditions imposed by this section, the annexation of any such land shall become effective upon the recordation in the Public Records of a Plat of such Additional Land signed by the owner thereof and of a supplemental declaration ("**Supplemental Declaration**") which (a) is signed by the then owner(s) of such Additional Land as Declarant; (b) describes the land to be annexed; (c) declares that the annexed land is to be held, transferred, sold, conveyed, and occupied as part of the Property subject to this Declaration; and (d) sets forth such additional limitations, restrictions, easements, covenants and conditions, not inconsistent with those of this Declaration, as are applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property and the Project and subject to the provisions of this Declaration and any amendment or supplement thereto. Declarant's right to annex land to the Project shall be subject to the following limitations:

- (a) The annexed land must be part of the Additional Land set forth and described herein;
- (b) Declarant shall not effectuate any annexation of land which would cause the total number of Lots existing in the Project to exceed 57;
- (c) The holder of each mortgage, deed of trust or other security device affecting any part of the Additional Land being annexed into the Project must consent, through

appropriate instruments recorded in the Public Records to the recordation of the Supplemental Declaration and to the Plat to which such Supplemental Declaration relates;

(d) The Additional Land added to the Project must be subdivided into Lots and Common Elements designed to be used for purposes similar to those contemplated by this Declaration, with all Units and Lots being similar in concept to that of such Units, Lots and uses in Plat "A" of the Project; *provided, however*, that in each succeeding phase of the Project the architectural style of the Units within such phase must remain consistent throughout such succeeding phase and in harmony with that of prior phases;

(e) All Common Elements covered by the Supplemental Declaration designated on the Plat related thereto shall be conveyed to the Association pursuant and subject to the provisions of Section 3.11 of this Declaration; and,

(f) Declarant's right to annex land to the Project shall expire 10 years after this Declaration is recorded in the Public Records.

1.04 No Obligation to Annex or Develop. Declarant has no obligation hereunder to annex any Additional Land to the Project or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Property, as defined on the date hereof, and land annexed thereto in accordance with the terms of this Article 1, shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat filed by Declarant or described or referred to in any documents executed or recorded by Declarant.

1.05 Association. Declarant has or will create the Association as a Utah non-profit corporation. The Members of the Association will be the Owners (including Declarant) of Lots and Units within the Project. Declarant intends to delegate and assign to the Association the powers of owning, maintaining and administering the Project's Common Elements, the duties of administering and enforcing this Declaration, and of levying, collecting and disbursing the assessments and charges hereinafter created.

1.06 Declaration. In order to further the general purposes stated above, Declarant hereby declares that all of the Property, and any of the Additional Property hereafter made subject to this Declaration as set forth in Section 1.3, shall at all times be owned, held, sold, conveyed, occupied, used, and enjoyed subject to the provisions of this Declaration and to the covenants, conditions, restrictions, equitable servitudes, reservations, easements, assessments, charges, and liens provided, referred to or incorporated herein, all of which shall run with such properties and all of which shall burden, benefit, and be binding upon Declarant, all other persons or entities having or acquiring any right, title or interest therein, and their respective successors, assigns, heirs, devisees and personal representatives.

1.07 **Form of Conveyancing; Leases.** Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot a Unit shall describe the interest or estate involved substantially as follows:

Lot No. _____ as identified on the Plat recorded in the Office of the Utah County Recorder as Entry _____, Map # _____ contained within Plat “_____” The Gables at Grandview, Provo City, Utah County, Utah (as such Plat may have heretofore been amended or supplemented), SUBJECT TO the Declaration of Protective Easements, Covenants, Conditions, and Restrictions of The Gables at Grandview Planned Development, recorded in the Office of the Utah County Recorder as Entry _____ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Elements described, and as provided for, in said Declaration (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot or Unit.

1.08 **Right to Develop.** Notwithstanding anything in this Declaration to the contrary, no provision of this Declaration is intended or shall be construed to prevent or limit Declarant’s rights to develop the Project and to exercise the rights reserved by Declarant as herein provided.

1.09 **Amendment to Plats.** Each Owner agrees to consent to the amendment of the Plat applicable to such Owner’s Lot, without unreasonable delay, for the purpose of accurately reflecting the location of the Units applicable to such Plat on an as-built basis.

ARTICLE 2

DEFINITIONS

2.01 Unless otherwise expressly provided herein, capitalized words and phrases used in this Declaration shall have the following meanings:

Additional Property means any parcel or parcels of real property included within the Development Plan but not included as part of the property described on Exhibit A. The property included within the Development Plan is described in Exhibit B attached hereto and made a part hereof.

Articles shall mean the Articles of Incorporation of The Gables at Grandview Owners Association, as such Articles may be amended from time to time.

Association shall mean The Gables at Grandview Owners Association to be formed by Declarant pursuant to the laws of the State of Utah.

Board shall mean the Board of Directors of the Association, appointed by Declarant during the Declarant Control Period or elected by the Owners following the Change of Control Date in accordance with the Articles and Bylaws of the Association.

Bylaws shall mean the Bylaws of the Association, as such bylaws may be amended from time to time.

Capital Improvement Assessment shall mean the charge against each Owner and the Owner's Lot or Unit for the purposes specified in Section 13.04.

Change of Control Date shall mean the date on which Declarant's Class B voting rights terminate pursuant to the provisions of Section 11.02.

City means Provo City, Utah County, Utah.

Common Assessment shall mean the charge against each Owner and the Owner's Lot or Unit for the purposes specified in Section 13.02.

Common Elements shall mean all the real property, Improvements, facilities and equipment owned or managed by the Association, or owned by another person subject to a lease, license, easement or other arrangement in favor of Declarant or the Association, for the benefit of all of the Owners. The Common Elements within the Project will be specified in the Development Plan and, where applicable, in other separately recorded documents identifying Common Elements or specifying an interest of the Association with respect to any Common Elements. Common Elements shall also include any communications systems, electronic networks or cable TV systems operated, leased, or subscribed to by the Association for the benefit of all Owners within the Project.

Common Expenses shall mean the expenses (including allocations for Reserves) incurred or assessed by the Association in fulfilling its duties.

Declarant shall mean Gables & Green & Green, Limited Liability Company, a Utah limited liability company, and its successors and assigns to whom it assigns, in whole or in part, the rights of Declarant hereunder by an express written assignment. Declarant may convey all or a portion of the Property for purposes of development with or without assigning its rights as Declarant under this Declaration.

Declarant Control Period shall mean the period commencing on the date on which the Association is formed and ending on the Change of Control Date.

Declaration shall mean this Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements, as amended from time to time.

Design Guidelines shall mean the design guidelines adopted by Declarant in accordance with this Declaration, as amended from time to time.

Design Review Committee shall mean the Design Review Committee for the Project created pursuant to Article 6 hereof.

Development Agreement shall mean any agreement executed by and between the City and Declarant pertaining to the development of any portion of the Project.

Development Plan shall mean The Gables at Grandview Development Plan for the Project as the same may be amended from time to time. The Development Plan is not intended to set forth the final approved configuration of all elements of the Project.

Director shall mean a member of the Board.

Guest shall mean any family member, tenant or invitee of an Owner, or any family member, tenant or guest of such a person.

Improvements shall mean all structures and appurtenances thereto of every type and kind, including, without limitation, buildings, out buildings, walkways, garages, carports, roads, driveways, parking areas, recreational amenities, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, and related fixtures and equipment.

Lot shall mean a residential lot within the Project as shown on a recorded Plat and intended for single-family residential use.

Managing Agent shall mean any person or entity appointed or employed as an agent to manage the Common Elements.

Member shall mean a member in the Association through ownership of a Lot or Unit within the Project.

Mortgage shall mean any mortgage or deed of trust or other conveyance of a Lot or Unit given to secure the performance of an obligation, and which will be void and reconveyed upon the completion of such performance.

Mortgagee shall mean a person to whom a Mortgage is made and shall include the beneficiary of a deed of trust. The term "**first Mortgagee**" shall include any Mortgagee

who, by virtue of the Owner's Mortgage holds a first and prior lien upon any Lot or Unit superior to the lien of any other Mortgagee.

Mortgagor shall mean a person who mortgages the Owner's Lot or Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a deed of trust.

Owner shall mean the person, including Declarant, holding title of record to any Lot or Unit as reflected in the Public Records (including contract purchasers under executory contracts of sale), but excluding those persons having such interest merely as security for the performance of an obligation. For purposes of membership in the Association (i.e., voting) and being obligated to pay assessments levied against Lots and Units by this Declaration, the term shall refer to owners of Lots and Units.

Plat shall mean a recorded subdivision plat, as amended from time to time, covering residential Lots, Units, and/or Common Elements within the Project.

Project shall mean The Gables at Grandview Planned Development as it exists at any time.

Property shall have the meaning set forth in the Recitals above and shall also include any Additional Property that is made subject to this Declaration pursuant to the provisions of Section 1.3.

Public Records shall mean the Office of the County Recorder of Utah County, Utah.

Reserves shall mean those reserves anticipated in Section 13.02(b).

Rules and Regulations shall mean the Rules and Regulations for the Project's Common Elements adopted by the Board pursuant to Section 12.03 as amended from time to time.

Special Assessment shall mean the charge against each Owner and the Owner's particular Lot or Unit for the purposes specified in Section 13.03.

Specific Assessment shall mean the charge against a particular Owner and the Owner's Lot or Unit for the purposes specified in Section 13.05.

Unit shall mean a single-family residential dwelling unit on the Property, whether attached or unattached, and constructed upon a numbered Lot or space reflected on a recorded Plat.

ARTICLE 3

THE GABLES AT GRANDVIEW OWNERS ASSOCIATION

3.01 **Associations.** The Gables at Grandview Owners Association shall do such things as are within its powers and as may reasonably be required to maintain the Project and its Common Elements as an attractive and desirable residential community. The Members of the Association shall be the Owners, including Declarant, of Lots and Units within the Project. The duties and powers of the Association shall relate to the Project as a whole and to the ownership and use of the Common Elements, their care, maintenance and upkeep, including the imposition of assessments therefor upon the Owners and their Lots and Units.

3.02 **Duties and Powers of Association.** The Association, acting through the Board, shall have the powers and duties as provided herein and in the Articles and Bylaws and such additional powers as shall be reasonable and necessary for the Association to accomplish the purposes of this Declaration.

3.03 **Operation and Maintenance.** The Association shall be responsible for the operation, management, regulation, maintenance, repair and replacement of the Common Elements. Without limiting the foregoing, the Association shall as needed operate, manage, regulate, maintain, repair and replace:

(a) Any surface, subsurface, or above-surface Common Elements, including trails or other Common Elements situated on or crossing any portion of the Project or which is the subject of an easement or license in favor of Declarant and/or the Association over property that is not a part of the underlying Property within the Project but for such easement or license.

(b) The exteriors of the Units in a manner that maintains the Units in a good and attractive condition and repair and ensures compliance of each Unit with this Declaration and the Design Guidelines (as defined below); *provided, however*, that the cost of the maintenance and repair of exteriors of each Unit shall be borne by the Owner(s) of such Unit through a Specific Assessment levied by the Association against the applicable Lot and Unit as set forth in Section 13.05.

3.04 **Health and Safety.** Neither Declarant nor the Association have any obligation to provide services for the maintenance of health and safety within the Project.

3.05 **Administration and Enforcement.** The Association shall have the power to:

(a) Grant easements or rights-of-way required by utilities to serve the Common Elements.

(b) Employ or contract with a manager to perform all or any part of the duties and responsibilities of the Association, and delegate its power to committees, officers and employees.

(c) Take such actions as may reasonably be necessary or desirable to comply with and enforce the Rules and Regulations.

(d) Contract with such persons as may reasonably be necessary or desirable to effectuate the purposes of this Declaration, including, without limitation, attorneys, accountants, and contractors to collect and dispose of solid waste and refuse, to maintain the landscaping, to provide security services, and the like, all with respect to the Common Elements.

(e) Take such actions as may reasonably be necessary or desirable to enforce the terms and provisions of the Articles, the Bylaws, or this Declaration.

3.06 Insurance. The Association shall maintain such policy or policies of liability, fire and hazard insurance with respect to the Common Elements and personal property owned by the Association as required herein.

3.07 Assessments. The Association shall levy and collect all assessments as provided herein.

3.08 Telecommunications Systems and Access. Within the Project, the Association may provide for cable television facilities and services; other telecommunications systems and access to communications programming, including Internet access via cable or telephone facilities; other audio or video program services; and other telecommunications devices as the Board may deem appropriate bearing in mind the demand of Owners therefor and the costs of delivery thereof.

3.09 Membership in the Association. Every Owner, upon acquiring title to a Lot or Unit in the Project, shall automatically become a Member of the Association and shall remain a Member until such time as the ownership of the Lot or Unit giving rise to such membership ceases, for any reason, at which time the successor Owner of the Lot or Unit shall become the successor Member with respect to such Lot or Unit.

3.10 Membership Appurtenant. Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of a Lot or Unit. Ownership of a Lot or Unit shall be the sole qualification for membership in the Association, and such membership shall not be transferred, pledged, or alienated in any way except upon the transfer of title to the Lot or Unit giving rise to such membership, and then only to the successor in interest of such title. Any attempt to otherwise transfer a membership shall be null and void, and will not be reflected upon the books and records of the Association.

3.11 **Title to the Common Elements.** Declarant hereby agrees that it will convey or assign (where Declarant owns less than the title) all of its right, title and interest in and to the Common Elements to the Association, free and clear of all encumbrances and liens, except for the following:

- (a) conditions, restrictions and reservations of easements set forth in this Declaration or any Plat;
- (b) liens for taxes and assessments;
- (c) the terms of other easements and reservations interests in Declarant's chain of title, excluding financial liens; and
- (d) any public rights of record.

The Declarant shall delay the conveyance of the title or assignment of rights as set forth in this Section 3.11 until after the recording of applicable Plats or entitling documents in the Public Records and completion of construction of any Common Elements as required by this Declaration.

3.12 **Taxes on Common Elements.** Real estate taxes or assessments levied or assessed against or upon the Common Elements shall be paid by the Association and shall constitute a portion of Common Expenses unless the applicable taxing or assessing authority is willing to prorate the same equally to each Owner's Lot or Unit. Each Owner shall execute such instruments and take such action as may be reasonably specified by the Association to obtain separate real estate tax assessments for the Common Elements on the Owner's Lot or Unit.

3.13 **Damage or Destruction to Common Elements.** Damage to or destruction of all or any portion of the Common Elements shall be handled in the following manner:

- (a) If the insurance proceeds are sufficient to effect total restoration in the event of damage or destruction to any Common Element, then the Association shall cause such Common Element to be repaired and reconstructed substantially as it previously existed.
- (b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such Common Element to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Capital Improvement Assessment against each of the Owners and their Lots and Units, in accordance with the provisions of this Declaration.

ARTICLE 4

EASEMENTS AND THIRD PARTY RIGHTS

4.01 **Easements Reserved by Declarant:** As to the Property, Declarant hereby reserves to itself and its assigns the following easements:

(a) **Construction Easements and Related Rights.** Declarant hereby reserves for the benefit of Declarant and its assigns the right from time to time:

(i) to construct, maintain, repair and replace any Improvements necessary or required for the full development of the Project on the Property owned by Declarant; on the Common Elements; and on portions of Lots outside of the building areas of Lots or Units which may be designated on a Plat;

(ii) to establish and use nonexclusive perpetual utility and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Common Elements for uses including, but not limited to access roads, paths, sidewalks and trails; clubhouse; mailbox structures; sprinkler systems and other landscaping changes, improvements and appurtenances (including without limitation, removal of trees and other vegetation subject to any necessary governmental approvals); ponds; drainage facilities; monuments; recreational areas and amenities; parking areas; conduit installation areas; storage facilities for supplies and equipment; earth walls and other roadway supports; lights; and signage;

(iii) to create other interests, reservations, exceptions and exclusions for the best interest of the Association and for the benefit of any Owner or all Owners *provided* that any such action taken and any easement, lease, permit or license, interest, reservation, exception or exclusion established does not unreasonably impair the use of the Common Elements or the building areas of Lots or Units designated on a Plat for their respective intended purposes; and

(iv) to construct and maintain offices, prefabricated structures, booths or other structures for administrative, sales and promotional purposes relating to the Project during its development and marketing.

(b) **Landscaping and Drainage Easements.** Declarant hereby reserves for itself and its assigns an easement across the Property (except the portions thereof occupied by Improvements) and within all Common Elements:

(i) to revegetate, beautify or maintain portions of the Property located adjacent to road rights of way;

(ii) to beautify and maintain portions of the Property to the extent necessary, in Declarant's judgment, to mitigate through landscaping, any potential visual impact of the Project;

(iii) to revegetate portions of the Property in order to control erosion, to beautify the Property or to restore the Property to a natural condition after damage by natural or man-made causes;

(iv) to preserve, improve, maintain, restore and revegetate natural and man-made storm drainage ways across the Property, including the building areas of the Property which include drainage ways, and to convey water in those drainage ways; and

(v) to construct, operate, maintain, repair and replace storm detention and water quality structures on the Property, including within the building areas of Lots or Units where necessary to adequately control surface water.

(c) **Easements for the Benefit of Owners.** Declarant hereby reserves for the benefit of all the Owners, the following described perpetual non-exclusive easements over all portions of Lots located outside of any building areas designated on the Plats, for the use and enjoyment of the Lots and Units in accordance with this Declaration: Easements, including any necessary access rights, for the installation, maintenance and repair of utilities and services; for drainage over, across and upon adjacent Lots and Units for water from normal use of adjoining Lots; and for the construction, maintenance and repair of earth walls, slopes, retaining walls and other supports. Declarant also reserves any other easements referred to on any Plat as reserved by Declarant for the use and enjoyment of Owners of Lots or Units.

4.02 **Easements for Benefit of Association.** Declarant hereby grants to the Association, its licensees, invitees, lessees, successors and assigns, a nonexclusive, perpetual easement over, upon, across, above, under and through the Property and each portion thereof to exercise any right held by or obligation imposed upon the Association under this Declaration or any other Association documents. Notwithstanding the foregoing, the Association shall not enter upon any Lot or Unit without reasonable prior notice to the Owner of the Lot or Unit, except in cases of emergency.

4.03 **Other Easements.** The Property shall be subject to the following easements in addition to those created in this Declaration:

(a) **Easements on Plats and of Record.** The Property shall be subject to all easements shown on any Plat, and to all easements of record.

(b) **Easements for Parking.** Temporary guest or recreational parking shall be permitted within the Common Elements only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association is

hereby empowered to establish "parking" and "no parking" areas within the Common Elements, as well as to enforce these parking limitations by all means lawful for such enforcement including the removal of any violating vehicle.

(c) **Easements for City and County Public Service Use.** Declarant hereby reserves and covenants for itself and all future Owners within the Project, easements for any City, county, state and federal public services, and for public utilities, including but not limited to, the right of the police to enter upon any part of the Property for the purpose of enforcing the law.

(d) **Cable Television.** Declarant hereby reserves easements in, upon, over, across and through the Property for the installation of a cable television system, together with the right to grant and transfer such easements.

4.04 **Nature of and Creation of Easements.** Unless otherwise set forth herein, any easement reserved in this Declaration shall be deemed to be nonexclusive, and each easement in favor of an Owner shall be deemed to be appurtenant to and for the benefit of the Lot or Unit owned by such Owner. Any and all easements reserved in this Declaration shall be deemed to be in full force and effect upon recordation of this Declaration in the Public Records whether or not referred to, reserved and/or granted in any instrument of conveyance.

4.05 **Limitation on Easement.** Each Owner's appurtenant right and easement of use and enjoyment respecting the Common Elements shall be subject to the following:

(a) The right of the Association to govern by reasonable Rules and Regulations the use of the Common Elements so as to provide for the enjoyment of the Common Elements in a manner consistent with the collective rights of all of the Owners;

(b) The right of the City, and any other governmental or quasi-governmental body having jurisdiction over the Property within the Project, to enjoy access and rights of ingress and egress over and across any open area contained within the Common Elements for the purpose of providing police and fire protection and providing any other governmental or municipal service; and

(c) The right of the Association to dedicate or transfer any part of the Common Elements to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; *provided* that such dedication or transfer must first be approved by the affirmative vote or written consent of not less than sixty percent (60%) of all outstanding Member votes.

ARTICLE 5

OWNERS' RIGHTS AND OBLIGATIONS

5.01 **Owners' Easements of Enjoyment.** Every Owner and the Owners' Guests shall have a non-exclusive right and easement of ingress and egress and of enjoyment in, to and over the Common Elements, which right and easement shall be appurtenant to and shall pass with fee title to the Owner's Lot or Unit, subject to the rights of the Association as set forth in this Declaration, the Articles and Bylaws, including the right of the Association to suspend the voting rights and rights to use the Common Elements (except, if necessary for ingress and egress to the Owner's Lot or Unit) by an Owner for any period during which any assessment against the Owner's Lot or Unit remains unpaid and delinquent, and for a period not to exceed 30 days for any single infraction of the Rules and Regulations. The Common Elements shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Owners of Lots and Units set forth herein and in the Rules and Regulations.

5.02 **No Exemption from Liability.** No Owner shall be exempt from personal liability for assessments to be levied by the Association, nor shall the Lot or Unit owned by such Owner be released from the liens and charges thereof by waiver of the use and enjoyment of the Common Elements or the facilities thereon or by abandonment of the Owner's Lot or Unit.

5.03 **Maintenance Obligations of Owners.** It shall be the duty of each Owner to abide by the provisions of the Declaration regarding Design Review Committee approval and the maintenance, repair and upkeep of the Owner's Lot or Unit in a neat, sanitary and attractive condition.

5.04 **Maintenance and Repairs.** Subject to those duties and responsibilities of the Association set forth in Section 3.03(b), each Owner shall, at the Owner's own cost, maintain the Owner's Unit in good condition and repair at all times. In the event of the damage or destruction of any Unit, the Owner of the Lot on which such Unit is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Project. The painting, remodeling, rebuilding, or modification of any Unit exteriors or parts thereof must first be submitted to and approved by the Design Review Committee pursuant to its procedures. All repainting/staining of the exteriors of the Units shall be performed at the direction of the Association pursuant to Section 3.03(b). No Owner shall openly or wantonly neglect his Unit.

5.05 **Owners Insurance.** Notwithstanding any insurance coverage required to be provided herein by the Association, each Owner shall be responsible to procure and maintain in force hazard insurance and liability insurance with respect to the Owner's Lot and Unit as is customary in projects such as the Project and which may be consistent with such Owner's personal circumstances.

5.06 **Assessments and Rules Observance.** Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration and for the observance of the Rules and Regulations promulgated by the Association from time to time.

5.07 **Transfer of Interests.** Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration following such transfer.

ARTICLE 6

DESIGN REVIEW

6.01 **Design Guidelines.** Subject to the City's ordinances and building codes, Declarant intends to develop all of the Lots and to construct all of the Units within the Project as well as all of the Common Elements and all other Improvements upon the Property. Such development and construction shall be completed pursuant to the Development Plan, any Development Agreement, Declarant's plans and specifications, and such other building and design criteria as Declarant and the Design Review Committee from time to time shall establish for the Project (collectively the "**Design Guidelines**"). Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized by Declarant for original construction. All original construction by Declarant pursuant to the Design Guidelines, as they may be amended from time to time, shall be and is hereby approved.

6.02 **Design Review Committee.** The Design Review Committee (the "**Committee**") shall consist of an uneven number of persons of not less than three nor more than five members, who need not be Owners. The members of the Committee shall be appointed by Declarant during the Declarant Control Period and thereafter by the Board. The Committee may utilize professional consultants including an architect, a landscape architect, and a civil engineer. The Committee shall have and exercise all of the powers, duties and responsibilities set out in this Declaration and shall meet on such schedules as may be established by its chairman. A majority of its members shall constitute a quorum and the majority of its members present at the meeting shall be sufficient to approve action. Actions may also be approved by unanimous written consent of all Committee members.

6.03 **Approval by Design Review Committee.** Except for original construction by Declarant, no Improvements of any kind, including, without limitation, residence dwellings, ponds, parking areas, mail boxes, fences, walls, garages, driveways, antennae, satellite dishes, flag poles, curbs, and covered walks shall ever be erected, altered, refinished or repainted (unless of the same finish or color as the original), or removed from any lands within the Property, nor shall any excavating, clearing, removal of trees or shrubs, landscaping or other alteration of existing site conditions be done on any lands comprising the Property, unless the complete plans

and specifications therefor (“**Plans and Specifications**”) complying with the Design Guidelines requirements are approved by the Committee prior to the commencement of work. The Committee shall consider the materials to be used on the external features of said buildings or structures, including exterior colors, harmony of external design and existing structures within the Project; the building bulk or mass of any buildings or structures within the Project, their location with respect to topography, existing trees, finished grade elevations, and harmony of landscaping with the natural setting and surroundings; and shall ascertain whether the Improvements conform to the Design Guidelines then in effect, under this Declaration.

6.04 **Approval Procedure.** Two copies of the complete Plans and Specifications must be submitted to the Committee for approval or disapproval by it in writing within 30 days after submission, *provided* that Plans and Specifications for any replacement structure to be constructed in substantially the same configuration, location, architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within 10 days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Article 6, as to which respects it shall be deemed disapproved. The Committee shall disapprove Plans and Specifications submitted to it which are not sufficient for it to exercise the judgment required of it by this Article 6. In the event of a conflict between the Design Guidelines and the applicable regulations or ordinances of the City or any other governmental entity having jurisdiction, the latter shall prevail.

6.05 **Construction.** Once begun, any construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the common areas in the vicinity of the activity *provided* that they shall promptly restore such areas to their prior condition when the use thereof is no longer required. The Committee shall have the authority and right at any time and from time to time at any reasonable hour to inspect construction or other activities authorized for the purpose of determining whether the same comply in all respects with the applicable Plans and Specifications as approved by it, but it shall have no duty to make such inspections.

6.06 **Fee.** The Committee may charge such fee or fees for its review of Plans and Specifications as shall be determined from time to time by the Board. Such fee or fees shall be reasonable in relation to the work performed and shall be applied uniformly.

6.07 **Variances.** The Committee has the authority to deviate from the requirements contained in the Design Guidelines in extenuating circumstances, when to do otherwise would create an unreasonable hardship or burden for an Owner. An affirmative vote of two-thirds (2/3) of the members of the Committee shall be required for a variance to be granted. The Committee does not, however, have authority to allow deviation from the requirements of the City.

6.08 **General Standards.** The Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the lands within the Project conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siting, height, topography, grade and finished grade elevation in keeping with the Design Guidelines and this Declaration.

6.09 **Ultimate Responsibility.** Each Owner shall at all times conform and comply with all approved Plans and Specifications for the Improvements on such Owner's Lot or Unit and otherwise conform and comply in all respects with the Design Guidelines and this Declaration, as well as with all applicable laws, ordinances, building codes, rules, regulations, orders and the like of any governmental agency having jurisdiction.

6.10 **Written Records.** The Committee shall keep and safeguard complete written records of all applications for approval submitted to it (including one set of all Plans and Specifications so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument, which records shall be maintained for a minimum of five years after the approval or disapproval.

6.11 **Procedure for Appeal.** In the event Plans and Specifications submitted to the Committee are disapproved or deemed disapproved, the Owner may appeal such disapproval or deemed disapproval in writing to the Board; *provided, however,* a written notice of appeal specifying the grounds for appeal consisting of any alleged failure by the Committee to properly apply the Design Guidelines or provisions of this Article 6 shall be received by the Board not more than 30 days following such disapproval or deemed disapproval. Within 30 days following receipt of such notice of appeal, the Board shall render a written decision determining whether the Committee properly applied the Design Guidelines, or the provisions of this Article 6. In the event the Board fails to render such decision within said 30 day period, such disapproval or deemed disapproval of the Committee shall be deemed to have been affirmed by the Board.

6.12 **Non-Liability of Design Review Committee Members.** Neither Declarant, the Committee, any member thereof, nor any duly authorized representative thereof shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all Plans and Specifications submitted to it solely on the basis of compliance with the Design Guidelines, any applicable provision of this Article 6, aesthetic considerations, and the overall benefit or detriment that would result to the immediate vicinity of the proposed construction or alteration and the Project generally. The Committee shall take into consideration the aesthetic aspects of the designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval from the standpoint of structural safety or conformance with building or other codes.

6.13 Variance in Event of Reconstruction. Any Owner whose Lot or Unit has suffered damage may apply for approval to the Committee for reconstruction, rebuilding, repainting or repair of the Owner's Lot or Unit in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete Plans and Specifications showing the proposed reconstruction and the end result thereof. The Committee shall grant such approval only if the design proposed by the Owner would result in a finished structure in compliance with the then applicable Design Guidelines.

ARTICLE 7

RESTRICTIONS ON ALL PROPERTY

7.01 Zoning Regulations. No lands within the Property shall ever be occupied or used by or for any building or purpose or in any manner which is contrary to a Development Agreement or this Declaration.

7.02 No Mining, Drilling or Quarrying. No Owner shall conduct mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, or on the surface of the Property.

7.03 No Business Uses. The Lots and Units within the Project shall be used exclusively for residential living purposes. No Lots or Units within the Project shall ever be occupied or used for any commercial or business purposes; *provided, however*, that nothing in this Section 7.3 shall be deemed to prevent (a) Declarant or its duly authorized agent from using any Lot or Unit owned by Declarant as a sales model, or (b) any Owner or the Owner's duly authorized agent from renting or leasing said Owner's Lot or Unit for residential use or, (c) any home business use authorized and licensed by the City pursuant to the City's home occupation ordinance, and approved by the Association prior to the Owner's application to the City.

7.04 Leasing Restrictions. No lease of any Unit shall be for less than the whole thereof. All leases shall be subject to the provisions of this Declaration whether or not stated therein.

7.05 Restriction of Signs. With the exception of a sign no larger than three square feet for the Owner to advertise the Owner's Lot or Unit for sale, no signs or advertising devices shall be permitted on single-family residences, including, without limitation, commercial, political, informational or directional signs or devices, except signs approved in writing by the Design Review Committee in accordance with its Design Guidelines as to size, materials, color and location: (a) as necessary to identify ownership of the Lot or Unit and its address; (b) as necessary to give directions; (c) to advise of rules and regulations; (d) to caution or warn of danger; and (e) as may be required by law. Any approved signs shall be located as approved by the Design Review Committee. The Design Review Committee may develop comprehensive

sign regulations. The Declarant may erect such signs in a size and color as it deems appropriate for the advertising and sale of Lots and Units within the Project.

7.06 Restrictions on Animals. No animals other than ordinary household pets (*i.e.*, ordinary, non-exotic pets that live inside the Unit) may be kept or allowed to remain on any Lot or Unit. Such ordinary household pets may not be kept or allowed to remain outside of the pet owner's Unit unless and until written authorization is obtained from the Board, and no more than two ordinary pets shall be allowed in any Unit. The Board, in its sole discretion, shall have the right to revoke such authorization at any time in its sole discretion and shall have the power to require any Owner or Guest to remove any animal or other pet belonging to them which is not disciplined or which constitutes an undue annoyance or a danger to other Owners, their Guests, or others. At all times while a pet is outside of its owner's Unit, the pet must be accompanied by a responsible individual and must be placed on a leash capable of controlling such pet. Any defecation left by any pet in or on any common area within the Development shall be immediately removed and disposed of by such pet's owner or custodian in a manner allowed by applicable laws and regulations.

7.07 Underground Utility Lines. All water, gas, electrical, telephone, and other permanent utility lines within the limits of the Property must be buried underground and may not be exposed above the surface of the ground.

7.08 Service Yards. Service yards or storage areas on any Lot shall be kept screened by approved planting or fencing so as to conceal them from the view of neighboring Lots and Units, access roads and area surrounding the Property. Such yards or areas not part of original construction shall be approved in advance by the Design Review Committee pursuant to its procedures and the Design Guidelines.

7.09 Maintenance of Property. All Lots and Units and all improvements on any Lot or Unit shall be kept and maintained by the Owner thereof in clean, safe, attractive and sightly condition, in good repair.

7.10 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot or Unit nor shall anything be done or placed on any Lot or Unit which is or may become a nuisance or cause significant embarrassment, disturbance or annoyance to others.

7.11 No Hazardous Activities. No activities shall be conducted on any Lot or Unit and no improvements shall be constructed on any Lot or Unit which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace if such is permitted by City ordinances.

7.12 No Unsightliness. No unsightliness shall be permitted upon any of the Property. Without limiting the generality of the foregoing: (a) any unsightly structures, facilities, equipment, tools, boats and vehicles other than operating automobiles shall be enclosed within an approved building or appropriately screened from view, except equipment and tools when in actual use for construction, maintenance or repairs; (b) no trailers, mobile homes, tractors, truck campers or trucks other than pickup trucks shall be kept or permitted to remain upon the Property; (c) no vehicle, boat or equipment shall be constructed, reconstructed, repaired or abandoned upon the Property; (d) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on the Property, except in approved service yards meeting the requirements of Section 7.7 and any requirements of the Design Guidelines and the Design Review Committee; (e) refuse, garbage and trash shall be placed and kept at all times in a covered container and such container shall be kept within an enclosed structure or appropriately screened from view; (f) hanging, drying or airing of clothing or household fabrics shall not be permitted on Lots or Units if visible from buildings, Lots, Units, or areas surrounding the Property.

7.13 No Annoying Lights, Sounds or Odors. No light shall be emitted from any Lot or Unit which is unreasonably bright or causes unreasonable glare or does not comply with the Rules and Regulations or Design Guidelines; no sound shall be emitted from any Lot or Unit which is unreasonably loud or annoying, including without limitation, speakers, horns, whistles, bells or other sounds devices, except security and fire alarm devices used exclusively to protect the Property or improvements thereon; and no odors shall be emitted from any Lot or Unit which are noxious or offensive to others.

7.14 Septic Tanks. No septic tank shall be installed upon the Property.

7.15 Fireplaces; Evaporative Coolers. No Unit within the Project shall (a) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is fueled by natural gas only; or (b) contain a swamp cooler.

7.16 Rules and Regulations. No Owner shall violate the Rules and Regulations adopted from time to time by the Association. No such rules shall be established which violate the intention or provisions of this Declaration or which shall unreasonably restrict the use of any Lot or Unit by the Owner thereof.

7.17 Drainage. No Owner may alter or obstruct the established drainage pattern of runoff water or storm drainage into, from or across the Owner's Lot or any other Lots in the absence of specific approval by the Design Review Committee and the City. For purposes of this Declaration, "established drainage" on any Lot is defined as the drainage pattern and facility in existence at the time that such Lot is conveyed to a purchaser by Declarant whether or not any Improvements are constructed thereon.

7.18 **Trails.** No Owner shall have the right to alter or obstruct the maintenance, use or enjoyment of any trail adjacent to any Lot or Unit.

7.19 **Parking.** Parking of vehicles shall be allowed only in parking areas shown on Plats or as approved by the Design Review Committee.

7.20 **Protection of Vegetation.** No tree of four inch caliper or greater measured 3" above the natural soil line shall be removed without the prior approval of the Design Review Committee pursuant to the Design Guidelines. Vegetation shall be placed and maintained on all Lots and in the common areas of the Project as provided in the Design Guidelines or in landscaping plans approved by the Design Review Committee.

7.21 **Excavations.** No excavation shall be made on lands subject to any Plat without the approval of the Design Review Committee and any governmental entity with jurisdiction over such activity.

7.22 **Occupancy.** No Lots or Units shall be used for human occupancy, either temporarily or permanently, until a certificate of occupancy is issued by the City. No Unit shall be occupied by more than two unrelated individuals.

ARTICLE 8

INSURANCE

8.01 **Hazard Insurance.** The Association shall procure and maintain a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the structural Common Elements, if any, owned by the Association with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

(a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and

(b) Such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.

8.02 **Fidelity Coverage.** The Association shall maintain fidelity coverage against dishonest acts on the part of managers, Directors, employees or volunteers responsible for handling funds collected and held for the benefit of the Association and the Members. The

fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half (1 ½) times the Association's estimated annual operating expenses and total reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

8.03 Waiver of Subrogation. The Association hereby waives and releases all claims against the Board, the Owners, the Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or of a breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

8.04 Liability Insurance. The Association shall maintain a comprehensive policy of public liability insurance covering the Common Elements. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Coverage shall have limits of liability of not less than \$1,000,000 per occurrence for personal injury and/or property damage.

8.05 Other Insurance and General. The Association shall also maintain Worker's Compensation Insurance as required by law and may maintain other liability insurance as it may deem desirable, insuring each Owner and the Association, Board and any manager, from liability in connection with the Common Elements. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners. Premiums for all insurance carried by the Association are Common Expenses.

8.06 Unit Owners Policies. Each Unit Owner shall be responsible to purchase and maintain in force appropriate hazard, content and liability insurance as such Owner shall determine to be appropriate to the Owner's needs and circumstances. The Association will not be required to file claims on any of its policies for any damage or liability claim that either should or would have been covered under any Owner's policy.

8.07 Other Insurance Provisions. All insurance required pursuant to this Article 8 shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article 8 to the contrary, any insurance required to be obtained by the Association pursuant to this Article 8 shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Elements or risks being insured.

ARTICLE 9

ENFORCEMENT

9.01 **Remedies and Enforcement.** Declarant, the Association, any Owner, and any Mortgagee shall have the right to enforce this Declaration, the Design Guidelines and the Articles and Bylaws by appropriate proceedings at law or in equity, including the right to enjoin a violation thereof; *provided, however*, that the Association shall have the exclusive right to enforce the liens and remedies provided herein with respect to the levy, collection, and enforcement of liens for Common Assessments, Special Assessments, Capital Improvement Assessments and Specific Assessments.

9.02 **Attorneys Fees and Costs.** Any judgment rendered in any action or proceeding to enforce this Declaration, the Design Guidelines, the Articles, or Bylaws shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

9.03 **Nuisance.** Any act or omission resulting in a breach of this Declaration, the Design Guidelines, or the Articles or Bylaws is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such act or omission and may be exercised by Declarant, the Association, or any Owner.

9.04 **Cumulative Remedies.** All rights, options, and remedies of Declarant, the Association, or any Owner for the enforcement of this Declaration, the Design Guidelines, the Articles or Bylaws shall be deemed cumulative and none of such rights, options, or remedies shall be deemed exclusive.

9.05 **Waiver.** The failure to enforce any of the covenants contained in this Declaration, the Design Guidelines, the Articles, or Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

9.06 **Personal Covenant.** To the extent the acceptance of a conveyance of a Lot or Unit creates a personal covenant between the Owner of such Lot or Unit, other Owners, or the Association, such personal covenant shall *terminate and* be of no further force or effect from and after the date such Owner ceases to be the Owner of such Lot or Unit except for the payment of moneys which came due to the Association during the period of such ownership.

ARTICLE 10**RIGHTS OF MORTGAGEES**

10.01 Title and Mortgagee Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give the same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

10.02 Preservation of Common Elements. The Common Elements shall remain substantially of the same character, type and configuration as when such Common Elements became part of the Project. Unless the Association shall receive the prior written approval of (a) all first Mortgagees of Lots and (b) the Owners of all Lots, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Elements, except to grant reasonable easements for utilities and similar or related purposes or as otherwise contemplated in this Declaration.

10.03 Notice-of Matters Affecting Security. The Association shall give written notice to any Mortgagee of a Lot specifically requesting from the Association such notice whenever:

- (a) There is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within 60 days after default occurs; or
- (b) Damage to the Common Elements from any one occurrence exceeds \$50,000; or
- (c) There is any condemnation or taking by eminent domain of any material portion of the Common Elements.

10.04 **Notice of Meetings.** The Board shall give to any Mortgagee of a Lot specifically requesting the same from the Association, notice of all meetings of the Association; and such Mortgagee shall have the right to designate in writing a representative to attend any or all such meetings.

10.05 **Right to Examine Association Records.** Any Mortgagee shall, upon reasonable request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Lot securing the Mortgage.

10.06 **Right to Pay Taxes and Charges.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Elements and may pay overdue premiums on insurance policies pertaining to the Common Elements, or secure new insurance coverage pertaining to the Common Elements on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

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

10.08 **Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article 10, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

ASSOCIATION BYLAWS

THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES 11, 12, AND 13. THE MISCELLANEOUS PROVISIONS OF ARTICLE 14 OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE BYLAW PROVISIONS AND THE OTHER PROVISIONS IN THIS DECLARATION.

ARTICLE 11

BYLAWS - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

11.01 **Membership.** Every Owner upon acquiring title to a Lot shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a

Member. Membership in the Association shall be mandatory and shall be appurtenant to, and may not be separated from, the ownership of a Lot.

11.02 **Voting Rights.** The Association shall initially have two classes of voting rights, votes of both classes being of equal value as to all matters except for determining the presence or absence of a quorum at Association meetings, in which case such determination shall be made as if there were no Class B voting rights.

(a) **Class A.** Each Owner, including Declarant, shall be entitled to one vote for each Lot in which such Owner holds the interest required for Association membership.

(b) **Class B.** Declarant shall be the only person entitled to Class B voting rights which shall entitle Declarant to two votes for each Class A voting right outstanding at the time (including those to which Declarant is entitled). Class B voting rights shall terminate and become a nullity on the earlier of

(i) the expiration of 90 days following the date on which the total outstanding Class A voting rights, other than those held by Declarant, equal ninety-five percent (95%) of the total number of Lots or Units authorized in the Project pursuant to the Development Plan; or

(ii) on December 31, 2009; or

(iii) upon surrender of the Class B voting rights by Declarant in writing to the Association. Upon termination of the Class B voting rights, all Members including Declarant shall have equal voting rights as to all matters.

11.03 **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the total number of votes appurtenant to such Lot be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Lot unless an objection is made at the meeting or in writing by another Owner of the same Lot, in which event no vote will be counted with respect to such Lot except to determine the presence or absence of a quorum.

11.04 **Voting.** Unless a greater than simple majority of the membership is specified as being required in the Articles, the Bylaws or this Declaration, the vote or approval of the Members shall require the approval of a simple majority of all eligible and outstanding Members' votes present in person or by proxy at a meeting of the Members at which a quorum is present.

11.05 **Records of Ownership.** Every Owner shall promptly cause to be duly filed of record in the Public Records the conveyance document (or in the case of a contract buyer, a copy of the sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein shall notify the Secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the Secretary of the Association shall maintain all such information in the records of ownership. The Association may at any time obtain and rely on information from the Public Records regarding the Owners and Mortgagees of Lots.

11.06 **Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

11.07 **Annual Meetings.** Annual meetings of the membership of the Association shall be held each year beginning in the year 2004 on such month, day and time as is set forth in the notice therefor; *provided, however*, that after the first such annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected members of the Board of Directors, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

11.08 **Special Meetings.** The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association and having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by a majority of the Owners present, either in person or by proxy.

11.09 **Notice of Meetings.** The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than thirty (30), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

11.10 **Quorum.** Except as provided in Section 13.16, Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; *provided, however*, that such Owners collectively be entitled to cast at least fifty-one percent (51%) of the total Association votes eligible to vote.

11.11 **Adjourned Meetings.** If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than 48 hours nor more than 45 days from the time the original

meeting was called, at which time the requirements for a quorum shall be reduced by one-half that required at the immediately preceding meeting.

11.12 **Officers.** The Association shall have a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. The Board may, if needed, appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Board immediately following each annual meeting of Owners at which the new Board has been elected; *provided, however*, that until the Board is elected by the Owners pursuant to Section 11.14, the officers will be appointed by Declarant.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board.

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

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all money and any 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.

11.13 **Initial Composition of Board; Declarant Control.** Declarant alone shall have the right to select the initial Board of Directors which may be composed of three Directors, none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until the termination of the Class B voting rights as provided in Section 11.02(b) at which time the Association shall proceed to elect members of the Board in accordance with the Association's Bylaws as set forth in Section 11.14.

11.14 **Board of Directors; Owner Control; Composition, Election, Vacancies.** The Association, through its Board of Directors, is responsible for the maintenance of any Common Elements, the determination, imposition and collection of Assessments, the enforcement of the

provisions of this Declaration and, in general, the preservation of the residential quality and character of the Project to the benefit and general welfare of the Owners. Subject to the provisions of Section 11.13, the Board shall be composed of five Directors, each of whom shall be an Owner (or an officer, director, or agent of a nonindividual Owner). At the first meeting of Owners to elect a Board of Directors, two shall be elected to a three-year term, two to a two-year term, and one to a one-year term. As Directors' terms expire, new Directors shall be elected for three-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Directors from among the Owners and such appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the Director they were appointed to replace. The Owners may increase the maximum number of Directors to an odd number up to nine at any meeting of Association members.

11.15 Indemnification of Board. Each of the Directors shall be indemnified and held harmless by the Lot Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in connection with any proceeding in which such Director may become involved by reason of being or having been a member of the Board.

11.16 Board Meetings, Quorum, Board Action. The Board may establish its rules for meetings, whether regular or special. A majority of current Board members shall constitute a quorum. The action of a majority or those Directors attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Board. Action by consent shall require the unanimous consent of all current Directors.

ARTICLE 12

BYLAWS - DUTIES AND POWERS OF THE ASSOCIATION

12.01 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, Bylaws or the Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Project:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Elements conveyed to it, whether by Declarant or by others, *provided* the same is free and clear of liens and encumbrances.
- (c) The Association shall maintain, repair and replace any structural Common Elements.

(d) The Association shall maintain all landscaping and plantings upon the Common Elements of the Project.

(e) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Elements, *provided* that the Association shall have the right to contest or compromise any such taxes or assessments.

(f) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.

(g) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Elements, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon 30 days' written notice thereof; and the term of any such agreement shall not exceed one year, renewable by agreement of the parties for successive periods of one year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

12.02 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of the Declaration or the Bylaws, including the power to levy and collect Assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement as required herein. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, the Bylaws or any Rules and Regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of the Declaration, the Bylaws and such Rules and Regulations.

(b) In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the Common Elements and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to

construct improvements or other work upon any of the Common Elements, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:

- (i) Construction, maintenance, repair and landscaping of the Common Elements on such terms and conditions as the Board shall deem appropriate;
- (ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners;
- (iii) Such utility services related to the Common Elements as the Board may from time to time deem necessary or desirable;
- (iv) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;
- (v) Fire, police and such other protection services as the Board may deem desirable or the benefit of the Owners or any portion of the Project; and
- (vi) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

12.03 Association Rules and Regulations. The Board from time to time, subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal and enforce reasonable Rules and Regulations governing, among other things: (a) the use of the Common Elements; (b) the use of any streets, driveways or parking areas owned by the Association; (c) the collection and disposal of refuse; (d) uses and nuisances pertaining to the Project; and (e) all other matters concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Project.

12.04 Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee of the Board, or the Managing Agent.

ARTICLE 13

BYLAWS - ASSESSMENTS

13.01 Assessments. The Association shall have the right to levy and collect Common Assessments, Special Assessments, Capital Improvement Assessments, and Specific Assessments as provided in this Article 13. The Board may require that payment of any of such

Assessments, except Specific Assessments, be made to, and collected by the Association in monthly or periodic bulk payments as directed by the Board in its discretion.

13.02 Common Assessments. The Common Assessments levied by the Association shall be used to promote the common benefit, recreation and welfare of the Owners; to meet obligations imposed on, incurred or assumed by the Association; to cover costs, including overhead and administrative costs, for the operation of the Association; and the operation, management, maintenance, repair, and replacement of the Common Elements. The Common Assessments may also be used to establish adequate Reserves for maintenance, repair, and replacement of the Common Elements. Common Assessments shall be levied against each Lot and Unit and the Owner thereof and shall be payable in 12 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 Common Assessments for the first fiscal year of the Association shall be based upon such portion of the fiscal year as follows the date of recordation of the Declaration in the Public Records and shall be payable in such installments and at such times as the Association, in the sole discretion of the Board, may determine.

(a) **Basis of Common Assessments.** The total Common Assessments shall be based on advance estimates of cash requirements by the Association to provide for payment of all estimated Common Expenses growing out of or connected with the operation of the Association and the operation, management, maintenance, and repair of the Common Elements, which estimates may include, among other things, expenses of snow removal, taxes, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, repairs and maintenance, wages for Association employees, compensation of a manager, legal and accounting fees, the creation of reasonable Reserves, surplus and/or sinking funds for the replacement of capital items and other purposes, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners. Common Assessments shall be made on the basis of the Association's fiscal year (which may be a calendar year). Notice of the proposed assessment for any such year shall be mailed to each Owner not later than 30 days prior to the effective date thereof, together with an operating budget for the upcoming fiscal year.

(i) The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Common Assessments for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal year.

(ii) The failure of the Association to give timely notice of any Common Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date 15 days after notice of such Assessment shall have been given to the Owner in the manner provided in Section 14.01.

(b) **Reserves.** Common Assessments may include reasonable amounts, as determined by the Board, collected as Reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Elements, or for any other purpose as determined by the Board. All amounts collected as Reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected. Said amounts shall be segregated from and not commingled with any other funds of the Association. Such Reserves shall be deemed contributions to the capital account of the Association by the Members.

13.03 Special Assessments. If and when required, Special Assessments shall be levied to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise provided in the Articles, Bylaws, or in this Declaration, a Special Assessment shall require the affirmative vote or written consent of a majority of Members. Special Assessments shall be payable in such manner and at such times, including installments over time, as the Board may determine.

13.04 Capital Improvement Assessments. If and when required, a Capital Improvement Assessment may be levied for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair or replacement of a capital improvement of or upon the Common Elements, including fixtures and personal property related thereto subsequent to the initial construction thereof for their intended purposes pursuant to the Development Plan; *provided, however,* that any such assessment in excess of Fifty Thousand Dollars (\$50,000) shall require the affirmative vote or written consent of a majority of all outstanding Member votes. Capital Improvement Assessments shall be levied against each Lot and Unit and the Owner thereof shall be payable in such manner and at such times, including installments over time, as the Board may determine.

13.05 Specific Assessment. In addition to the Common Assessment and any Special Assessment or Capital Improvement Assessment authorized pursuant to Sections 13.02, 13.03, and 13.04, above, the Board may levy at any time Specific Assessments (a) on every Lot especially benefitted (i.e., benefitted to a substantially greater degree than any other Lot) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Elements made on the written request of the Owner of the Lot to be charged; (b) on every Lot the Owner, occupant or guest of an Owner of which shall cause any damage to the Common Elements necessitating repairs; and (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work. If a special benefit arises from

any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the Lots benefitted.

13.06 Creation of Lien and Personal Obligation of Assessment. Each Owner of any Lot or Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Common Assessments, Special Assessments, Capital Improvement Assessments and Specific Assessments levied as provided herein. Each such assessment, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot or Unit and shall be a continuing lien upon the Lot or Unit against which the assessment is made. It shall have priority over any declaration of homestead recorded after the date on which this Declaration is recorded in the Public Records and shall continue until paid in full or otherwise satisfied. In a voluntary conveyance of a Lot or Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Lot or Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor, and each such assessment, together with interest, late charges, collection costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot or Unit at the time when the assessment fell due.

13.07 Adjustment of Assessments. The Association may, in the Board's sole discretion, phase in its budget for assessment purposes during a period of up to 12 months following the commencement of assessments pursuant to Section 13.12 with approximately equal monthly additions so that the amount of the budget (determined based on assumed full operation) collected in the first month of the phase-in period will be (assuming the phase-in period is 12 months) one-twelfth (1/12) of the normal monthly assessment under the full budget, the amount collected in the second month will be two-twelfths (2/12) of the normal monthly assessment, and so on, until the full normal monthly amount is collected in the twelfth month. The Association shall reduce its expenditures not to exceed its collections in these phase-months. Further, in the event that a Plat is recorded, the Board shall have the power to make equitable and reasonable adjustments in the amount of assessments (or installments thereof) so as to take into account (a) any increases in assessments payable to the Association resulting from the inclusion of new Lots or Units and (b) any increases in Common Expenses resulting from the inclusion of new Lots or Units.

13.08 No Offsets or Abatement. All assessments shall be payable in the amount specified by the assessment, and no offsets or abatements against such amount shall be permitted for any reason, including, without limitation, a claim that (a) the Association is not properly exercising its duties and powers as provided in this Declaration, or (b) an Owner has made or elects to make no use of the Common Elements.

13.09 Rate of Assessment. All Common Assessments, Special Assessments, and Capital Improvement Assessments authorized by Sections 13.02, 13.03, and 13.04, respectively,

shall be assessed and allocated among the owners of the Lots based on the relative square footage of each Unit compared to the aggregate square footage of all Units, as determined by the Association in its reasonable discretion; *provided, however*, that until a Lot has been both fully improved with a Unit and occupied for the first time for residential purposes, the Common Assessments and Special Assessments applicable to such Lot shall not be due and payable. During the period of time that Declarant holds the Class B voting rights in the Association, if assessed fees collected by the Association fail to adequately meet Association expenses, then Declarant shall pay any shortfall.

13.10 Homestead Waiver. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect or from time to time hereafter.

13.11 Limitations on Certain Increases in Common and Special Assessments. The Board shall not in any fiscal year of the Association, without the affirmative vote or written consent of a majority of all outstanding Member votes, levy a Common Assessment per Lot or Unit which is more than fifteen percent (15%) greater than the Common Assessment per Lot or Unit for the immediately preceding fiscal year. Nor shall the Board for any fiscal year of the Association, without the affirmative vote or the written consent of a majority of all outstanding Member votes, levy a Special Assessment against each Lot or Unit which, when aggregated as to all Lots and Units, exceeds ten percent (10%) of the Common Expenses of the Association for such fiscal year. Notwithstanding the foregoing, the Board may increase Common Assessments and Special Assessments which are subject to the foregoing limitations in an "emergency situation" which is defined as either of the following: (a) an extraordinary expenditure necessary to operate, repair or maintain the Common Elements where there exists a threat to personal safety or (b) an extraordinary expenditure necessary to repair or maintain the Common Elements that could not have been reasonably foreseen by the Board in preparing its budget. However, prior to the imposition and collection of an assessment under clause (b) of the preceding sentence, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of the assessment.

13.12 Date of Commencement of Assessments. Common Assessments and other assessments shall commence on the first day of the month following the substantial completion of the construction of the Improvements that are located on that portion of the Property identified in the Development Plan as part of the Common Elements and the conveyance of such Property and Improvements to the Association pursuant to Section 3.11. The first Common Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association and may be further adjusted in accordance with the phase-in provisions of Section 13.07, at the option of the Board.

13.13 **Reports to Members.** The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, and shall cause to be distributed a copy of each such statement to each Member. The Board shall also prepare and distribute to each Member with the delivery of notice of each new proposed Common Assessment as required pursuant to Section 13.02(a), a written, itemized estimate of the Common Expenses to be incurred by the Association during such new year in performing its functions under this Declaration as well as expected income and any surplus from the prior year's assessments.

13.14 **Excess Funds.** At the end of any fiscal year of the Association, the Board may determine that all excess funds of the Association, over and above the amounts used for any purpose, may be retained by the Association and used for Reserves, or to reduce the following year's Common Assessments.

13.15 **Remedies for Non-payment of Assessments.** Any installment of a Common Assessment, Special Assessment, Capital Improvement Assessment, or Specific Assessment not paid within 10 days after the due date shall bear interest from the due date of such installment to the date paid at the rate of twelve percent (12%) per annum. If any installment of an assessment is not paid within 10 days after it is due, the Owner responsible therefor shall be required to pay a late charge of five percent (5%) of the amount of the delinquent installment. The Association may either bring a legal action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Unit. Any judgment obtained by the association in connection with the collection of delinquent Assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights. Failure of the Association to promptly enforce any remedy granted pursuant to this Section 13.15 shall not be deemed a waiver of any such rights. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or by abandonment of the Owner's Lot or Unit.

(a) **Notice of Default.** No action shall be brought to enforce any assessment lien herein, unless at least 30 days have expired following the date Notice of Default is deposited in the United States mail, postage prepaid, to the Owner of the Lot, and a copy thereof has been recorded by the Association in the Public Records. Said Notice of Default must recite a good and sufficient legal description of the Lot or Unit, the record Owner or reputed Owner thereof, the amount claimed (which may include interest and late charges as provided in this Section 13.15, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association, as claimant. Such Notice of Default shall be signed and acknowledged by an officer of the Association.

(b) **Foreclosure Sale.** Any sale provided for above may be conducted by the Board, its attorney or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage, or in any other manner permitted by law. The

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

(c) **Curing of Default.** Upon the timely curing of any default for which a Notice of Default was recorded by the Association, an officer of the Association shall record in the Public Records an appropriate Release of Lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Association to cover the cost of preparing and recording such release.

(d) **Certificate as to Indebtedness.** A certificate executed and acknowledged by any officer of the Association stating the indebtedness secured by the liens created hereunder upon any Lot or Unit shall be conclusive upon the Association and the Lot or Unit Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith.

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

13.16 Quorum Requirements. The quorum at any Association meeting required for any action authorized by Section 13.03 (special assessments), above, shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast sixty percent (60%) of the total Association votes eligible to vote shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 14.01) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held less than 48 hours nor more than 45 days following the immediately preceding meeting.

13.17 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

13.18 Subordination of Lien to First Mortgages. The lien of the Assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Lot by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any Assessment installment which accrues or becomes due prior to the time such holder

or purchaser comes into possession or ownership of such Lot; *provided, however*, that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot in connection with any foreclosure of a first Mortgage shall relieve any Lot from the lien of any Assessment installment thereafter becoming due.

13.19 **No Abatement.** No diminution or abatement of any assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Project; (b) the making of (or failure to make) any repairs or improvements to or the maintenance of any Common Elements, or any part thereof; or (c) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

ARTICLE 14

GENERAL PROVISIONS

14.01 **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 delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any officer or Director of the Association or to the Association's Registered Agent as reflected in the Association's records at the Utah Department of Commerce, Division of Corporations and Commercial Code. Any notice required or permitted to be given to the Design Review Committee may be given by delivering or mailing the same to the Managing Agent or the Association or any member of the Design Review Committee.

14.02 **Successors and Assigns.** Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, each Owner, and their respective heirs, personal representatives, successors and assigns.

14.03 **Limited Liability.** Neither Declarant, the Association, the Board, the Design Review Committee nor any member, agent or employee of any of the same shall be liable to any party for any injury, damage, loss, cost or expense suffered by reason of any action or for failure to act with respect to any matter if the action taken or failure to act was in good faith and without notice.

14.04 **Duration of Declaration.** All provisions, covenants, conditions and restrictions contained in this Declaration shall continue and remain in full force and effect until January 1, 2050, *provided, however*, that unless at least one year prior to said time of expiration, there is recorded an instrument directing the termination of this Declaration, executed by the Owners of

not less than seventy-five percent (75%) of the Lots and Units and by all first Mortgagees then subject to this Declaration, said provisions, covenants, conditions and restrictions shall continue automatically for an additional 5 years and thereafter for successive periods of 5 years each unless, at least one year prior to expiration of any such extended period of duration, this Declaration is terminated by an instrument recorded in the Public Records directing termination signed by the Owners of not less than seventy-five percent (75%) of the Lots and Units and all first Mortgages then subject to this Declaration.

14.05 Use of Funds Collected by the Association. All funds collected by the Association, including assessments and reserves paid by Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for not-for-profit purposes of the Association in managing, maintaining, caring for, preserving and architecturally controlling the Property and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Member (other than as a result of the Association's managing, maintaining, caring for, preserving and architecturally controlling the Property and other than as a result of expenditures made for other permitted purposes set forth in this Declaration).

14.06 Amendment. This Declaration may be revoked or amended as follows:

(a) The Declarant may unilaterally amend this Declaration at any time until the Change in Control Date. Consent of the Members of the Association shall not be required until after the Change in Control Date.

(b) Subsequent to the Change in Control Date, this Declaration and amendments thereto may be amended by the affirmative vote or written consent of not less than sixty percent (60%) of all outstanding Member votes.

(c) An amendment or revocation which only requires the execution of an instrument by Declarant shall be effective when executed by Declarant and recorded in the Public Records. An amendment which requires the affirmative vote or written consent of the Members shall be effective when executed by the President and Secretary of the Association (who shall certify that the amendment has been so approved) and recorded in the Public Records.

(d) Notwithstanding the foregoing, any provision of the Articles, the Bylaws, or this Declaration, which expressly requires the approval of a specified percentage or specified percentages of the voting power of the Association or first Mortgagees for action to be taken under said provision, can be amended only with the affirmative vote or written consent of not less than the same percentage or percentages of the voting power of the Association and/or first Mortgagees. Any amendment subject to this provision shall be effective after the specified approval has been given and that fact has been certified in a writing executed by the President and the Secretary of the Association.

14.07 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 14.07:

(a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Owner;

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed; and

(c) Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant, (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

14.08 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Project or the Property to the public, or for any public use.

14.09 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in any Lot or Unit in the Project shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained, referred to or incorporated herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said Lot or Unit.

14.10 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation and construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. The term "person" shall refer to a person or entity. The terms "recorded and recordation" shall refer to recording in the Public Records. The word "shall" is deemed to be imperative and the word

“may” is deemed to be permissive. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

14.11 **Severability.** Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision of this Declaration.

14.12 **Declarant’s Rights Assignable.** All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.


14.13 **Condemnation.** If at any time or times an insubstantial or minor part of the Common Elements or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Elements. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

14.14 **Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who heretofore acquired or hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots or in the Common Elements shall be subject to, the terms of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration.

14.15 **Effective Date.** This Declaration and any amendment hereto, shall take effect upon its being filed for record in the Public Records.

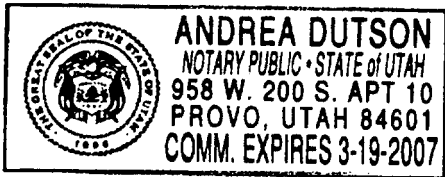
IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

GABLES & GREEN & GREEN, LIMITED
LIABILITY COMPANY

By: 
David K. Gardner, Member

STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

The within instrument was acknowledged before me this 25 day of June, 2003, by David K. Gardner in the capacity indicated.



Andrea Dutson
NOTARY PUBLIC

EXHIBIT A

Beginning at a point which is South $00^{\circ}32'42''$ East along the 1/4 Section line 5.28 feet from the North 1/4 corner of Section 35, Township 6 South, Range 2 East, Salt Lake Base and Meridian;

South $00^{\circ}32'42''$ East along the 1/4 section line 884.10 feet; thence South $89^{\circ}27'18''$ West 28.00 feet; thence South $80^{\circ}25'28''$ West 238.22 feet; thence North 431.22 feet; thence North $79^{\circ}37'48''$ East 94.91 feet; thence South $82^{\circ}51'31''$ East 137.43 feet; thence North $00^{\circ}45'27''$ West 160.41 feet; thence along the arc of an 18.00 foot radius curve to the left through a central angle of $89^{\circ}14'33''$ for 28.04 feet (chord bears North $45^{\circ}22'44''$ West 25.29 feet); thence North $01^{\circ}14'40''$ West 56.01 feet; thence along the arc of an 18.00 foot radius curve to the left through a central angle of $90^{\circ}45'27''$ for 28.51 feet (chord bears North $44^{\circ}37'16''$ East 25.62 feet); thence North $00^{\circ}45'27''$ West 240.27 feet; thence North $89^{\circ}49'48''$ East 31.28 feet to the point of beginning.

AREA = 2.8683 ACRES (8 BUILDING PADS)

BASIS OF BEARING = STATE PLANE COORDINATE SYSTEM

EXHIBIT B

BEGINNING AT A POINT WHICH IS SOUTH 00 DEGREES 32'42" EAST 5.28 FEET ALONG QUARTER SECTION LINE FROM THE NORTH QUARTER CORNER OF SECTION 35, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 00 DEGREES 32'42" EAST 320.03 FEET ALONG QUARTER SECTION LINE; THENCE SOUTH 89 DEGREES 27'18" WEST 28.00 FEET; THENCE SOUTH 00 DEGREES 32'42" EAST 560.51 FEET; THENCE SOUTH 82 DEGREES 20'52" WEST 281.94 FEET; THENCE NORTH 86 DEGREES 52'55" WEST 329.30 FEET; THENCE SOUTH 08 DEGREES 57'03" WEST 115.07 FEET; THENCE ALONG THE ARC OF A 2309.00 FOOT RADIUS CURVE TO THE LEFT 170.38 FEET (CENTRAL ANGLE = 04 DEGREES 13'40") THE CHORD OF WHICH BEARS NORTH 84 DEGREES 40'15" WEST 170.34 FEET; THENCE NORTH 08 DEGREES 57'03" EAST 127.10 FEET; THENCE NORTH 02 DEGREES 11'15" WEST 111.27 FEET; THENCE NORTH 25 DEGREES 52'44" WEST 170.18 FEET; THENCE NORTH 42 DEGREES 09'04" WEST 208.71 FEET; THENCE NORTH 39 DEGREES 26'48" EAST 6.44 FEET; THENCE 37 DEGREES 48'16" EAST 95.11 FEET; THENCE NORTH 45 DEGREES 30'21" EAST 67.92 FEET; THENCE NORTH 39 DEGREES 43'39" EAST 48.61 FEET; THENCE NORTH 37 DEGREES 25'43" EAST 118.47 FEET; THENCE 40 DEGREES 08'55" EAST 92.10 FEET; THENCE NORTH 31 DEGREES 31'32" EAST 108.83 FEET; THENCE NORTH 26 DEGREES 57'21" EAST 31.15 FEET; THENCE NORTH 89 DEGREES 49'48" EAST 668.60 FEET TO THE POINT OF BEGINNING.

CONTAINS 17.6525 ACRES