



## DECLARATION OF COVENANTS CONDITIONS AND RESTRICTION OF HURRICANE GARDEN HOMES (Phase 1 and 2)

### PREAMBLE

WHEREAS the Owners of real property in the Hurricane Garden Homes Subdivision located within Hurricane City (“Association”) finds and determines that the Declaration of Covenants Conditions and Restrictions (“CCR’s”) are inconsistent with the needs of the current residents;

WHEREAS the Association desires to repeal the current CCR’s, recorded as document #00434145 in the office of the Washington County Recorder, in their entirety and replace them with CCR’s that will be more consistent with the desires and needs of the residents;

WHEREAS the Association desires to change the amount of the property included within its boundaries;

WHEREAS the Association held numerous meetings to discuss and deliberate new CCR’s and on a special meeting held September 28<sup>th</sup>, 2011, being duly called and properly noticed for the express purpose of adopting new CCR’s. Member present or represented by proxy voted on and approved the new CCR’s;

NOW THEREFORE, BE IT HEREBY DETERMINED by the Association as follows:

1. Amendment

Declaration of Covenants Conditions and Restrictions of Hurricane Garden Homes (Phase 1), recorded as document #00434145 in the office of the Washington County Recorder, is hereby amended, superseded and replaced in its entirety by the following Declaration of Covenants Conditions and Restrictions of Hurricane Garden Homes.

2. Property Encumbered

The boundaries of the association are hereby changed to include only the properties defined in “Exhibit A”

## **Exhibit A**

### **Legal Description**

All of Hurricane Garden Homes "Subdivision" Amended – Phase No. 1, located in Section 33, Township 41S, Range 13W and also including all of Hurricane Garden Homes Subdivision – Phase 2, located in Section 33, Township 41S, Range 13W as shown on the Official Plats on file with the Washington County Recorder, less all other properties not part of the afore mentioned plats

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
HURRICANE GARDEN HOMES**

**Environmentally Friendly Community Living**

This Declaration is made and executed this 13<sup>th</sup> day of October, 2011, by HURRICANE GARDEN HOMES OWNERS ASSOCIATION, (hereinafter referred to as "Association").

**RECITALS**

A. Association is a non-profit corporation comprised of the Owners of lots in that certain parcel of real property (Development) described in Exhibit A of this Declaration that contained a planned unit development with certain Common Areas for the benefit of the Owners of Lots therein.

B. Association desires to provide for the preservation and enhancement of the property values through preservation of environmental and aesthetic principles and for maintenance of the Common Areas. To this end, and for the benefit of the Development and the Owners thereof, the Association desires to subject the Development described in Exhibit A of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which are for the benefit of the Development and each Owner thereof.

C. Association possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and to otherwise administer and enforce the provisions of this Declaration.

D. Association desires to replace in its entirety the Declaration of Covenants, Conditions & Restrictions of Hurricane Garden Homes recorded in the Washington County Recorder Book No. \_\_\_\_\_ Page \_\_\_\_\_, with this Declaration.

NOW, THEREFORE, for the foregoing purposes, Association declares that the Development is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, and as set forth in the plat recorded concurrently herewith.

**I. DEFINITIONS**

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

1. Declaration shall mean and refer to this instrument as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions hereof.

2. Development shall mean and refer to all of the real property and improvements thereon described in Exhibit A of this Declaration and comprising the Hurricane Garden Homes.

3. Lot shall mean and refer to any of the separately numbered and individually described plots of land shown as Phase I and Phase II on the Plat.

4. Common Areas shall mean and refer to that portion of the Development which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon.

5. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

6. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in a Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term Owner shall not mean or include a Mortgagee or a beneficiary of trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

7. Association shall mean and refer to Hurricane Garden Homes Owners Association, its successors and assigns, or with any successor or assign to whom all or substantially all of its interest in the development of the Property is conveyed.

8. Articles and Bylaws shall mean and refer to the Articles of Incorporation and the By-Laws of the Association.

9. The Board shall mean and refer to the Board of Directors of Hurricane Garden Homes Owners Association.

10. Member shall mean and refer to every person who holds membership in the Association. Members shall be comprised of the Owners.

11. Mortgagee shall mean and refer to any person named as a first mortgagee or beneficiary under or holder of a first deed of trust.

## II. DESCRIPTION OF PROPERTY

The property which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the Development more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

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

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations or recorded and rights incident thereto; all instruments of record which affect the above-described land or any portion thereof, including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way, all easements and rights-of-way or record of any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line or similar facility which traverses or partially occupies the above-described land at such time as construction of all Project improvements are complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, line, cables, wires, utility lines, and similar facilities.

RESERVING UNTO ASSOCIATION, however, such easements and rights of ingress and egress over, across, through, and under the above-described land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Association or for any assignee or successor of Association (in a manner which is reasonable and not inconsistent with the provisions of this Declaration):

(i) To construct and complete the improvements as Association deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith;

(ii) To improve portions of the Development with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners or the Association, or as such assignee or successors may reasonably determine to be appropriate.

If, pursuant to the foregoing reservations, the above-described land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist.

### III. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appurts.

2. Voting Rights. Members shall be entitled to one vote for each Lot in which an interest required for membership in the Association is held. In no event, however, shall more than one vote exist with respect to any Lot.

3. 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 among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

### IV. PROPERTY RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot.

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

All of Lot \_\_\_\_\_ of Hurricane Garden Homes, according to the official plat thereof, subject to the Declaration of Conditions, Covenants and Restrictions, all on file in the office of the Washington County Recorder.

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.

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

- (a) The right of the Association to suspend a Member's right to the use of any Common Areas, including any amenities located thereon, for any period during which assessment on such Member's Lot remains unpaid and/or for a period not exceeding ninety (90) days, for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association;
- (b) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;
- (c) The right of the City of Hurricane and any other governmental or quasi-governmental body having jurisdiction over the Development to access and rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Development for purposes of providing police and fire protection and providing any other governmental or municipal services; and
- (d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

## V. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with an interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest, late fees and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the owner of such Lot at the time the assessment becomes due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. Any such liens, however, shall be subordinate to the lien or equivalent security interest of any first Mortgage on the unit recorded prior to the date any such common expense assessments become due.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of residents of the Development. The use made by the Association of funds obtained from assessments may include, but are not limited to, payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, replacement, and improvement of the Common Areas; common utilities (if any); payment of required maintenance on Owner's Lots or Living

Units under Article VI Section 2; management and supervision of the Common Areas; establishing and funding reserve to cover major repair or replacement or improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration, By-Laws, or its Articles of Incorporation.

3. Base for Assessment. Each Living Unit which is certified for occupancy and each unimproved Lot which has been conveyed to an Owner shall be assessed at the same and equal rate.

4. Special Assessments. In addition to the monthly assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable for being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repair or replacement in connection with the Common Areas. Any such special assessment must be assented to by more than fifty percent (50%) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum required for any action authorized by Section 4 above shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes 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 4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forth-five (45) days following the immediately preceding meeting.

6. Equal rate of Assessment. Both monthly and special assessments shall be fixed at a uniform (equal) rate for all Lots.

7. Monthly and Special Assessment Due Date. The monthly assessments and any special assessments provided for herein shall be due and payable within thirty (30) days of the invoice date.

8. Certificate Regarding Payment. Upon the request of any Owner or Prospective purchaser or mortgagee of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

9. Effect of Non-payment – Remedies. Any assessment not paid within thirty (30) days of the invoice date shall be considered delinquent and, together with the hereinafter provided for interest, late fees and costs of collection, be, constitute, and remaining a continuing lien on the Lot, provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments become due. The person who is the Owner of the Lot at the time the assessment becomes due shall be and remain personally liable for payments. Such personal liability shall not pass to the Owners successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the due date, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum plus a

late payment service charge equal to five percent (5%) of each delinquent amount due. The Association may, in its discretion, bring an action either against the Owner who is personally liable and/or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

10. Tax Collection From Lot Owners by Washington County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of his monthly assessment will be required to pay to the Association his prorate share of such taxes. Notwithstanding anything to the contrary contained in this Declaration, or otherwise, Washington County shall be, and is, authorized to collect such prorate share (on an equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed so to do. In the event that the assessor shall separately assess Common Areas to the Association, the Board may require, in its discretion, a special assessment to pay such taxes, or they may be included in the regular assessment budget.

## **VI. OPERATION AND MAINTENANCE**

1. Maintenance of Lots and Living Units. Each Lot and Living Unit shall be maintained by the Owner thereof and such maintenance thereof must not detract from the appearance of the Development and must not affect adversely the value or use of any other Lot or Living Unit. The Association shall have no obligation regarding maintenance or care of Lots or Living Units except as provided in Section 2 of this Article VI. Especially regarding the front or street side of the Lot, each Owner shall maintain this area of his Lot and Living Unit in a manner that promotes a clean, orderly and attractive appearance including weed removal and control.

2. Operation and Maintenance by Association. The Association by its duly delegated representative(s) shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive and generally in good condition and repair. Any part of the Common Areas sustaining damage from flood or other natural disasters may need substantial repair or rebuilding which may require a special assessment to the Lot Owners. Notwithstanding the provisions regarding Lot and Living Unit maintenance by Owners, in the event an Owner of any Lot in the Development shall fail to maintain his Lot in a manner satisfactory to the Architectural Review Committee or the Board, the Board, after approval by two-thirds (2/3) vote of the Board, shall have the right, through its agents, employees or through an independent contractor to enter upon such lot and repair, maintain, and restore the portion of the Lot maintainable by the Owner and any other improvements erected thereon (but not the interior of his Living Unit). The costs incurred by the Association in maintaining, repairing or restoring those portions of a Lot maintainable by the Owner shall then be added to and become an assessment and lien against the Lot as described in Section V, 1 and subject to collection as described in Section V, 9 of this Declaration.

3. Utilities. The Association shall pay for the costs of maintaining ponds and irrigation systems except the individual irrigation system that the Owner installs on his Lot. Water, sewer, and garbage pickup for each Lot shall be billed direct to the Lot Owner by the City of Hurricane or other provider. Each Lot Owner shall pay for all other utility services which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

4. Insurance. The Association shall secure and at all times maintain the following insurance coverage:

(a) A policy or policies of fire and casualty insurance, with extended coverage, for the full replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Hurricane Garden Homes Owners Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interest may appear".

(b) A comprehensive policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to invitees or tenants of the Development or of the Owners. Limits of liability under such insurance shall not be less than one million dollars (\$1,000,000.00) for all claims for personal injury, bodily injury, and/or property damage arising out of a single occurrence, such coverage to include protection against liability for water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced, and shall contain a "severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the Development because of negligent acts of the Association or other Owners. If the above coverage is not readily available, the policies need to provide the above coverage as closely as possible with what is customarily available with respect to projects similar in construction, location and use.

(c) A fidelity policy or policies to protect against dishonest acts on the part of Trustees, Officers, Managers, and Employees of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one-hundred percent (100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. If available, said policy shall also provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to the Association.

The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Development in construction, nature, and use.

(2) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or equivalent rating. Each insurer must be specifically licensed in the State of Utah.

(3) The Association shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

(5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended or invalidated due to the conduct of the Association or of any director, officer, agent, or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

(6) Notwithstanding any provisions to the contrary herein, so long as the Mortgagee or its designee holds a mortgage or beneficial interest in a trust deed on a Lot in the Development or owns a Lot, insurance policies shall meet all requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.

(7) Mortgagee Clause. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(8) Review of insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

(9) Lots and Living Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot or Living Unit and acts and events occurring thereon. Accordingly, each Owner shall secure and keep in force at all times fire and all risk coverage insurance which shall be equal to or greater than the replacement cost of the individual Living Unit. The policy shall provide as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of: (i) compensation equal to the full amount of damage or loss, or (ii) compensation to the first Mortgagee under the mortgage equal to the full amount of the unpaid principal balance of the mortgage loan plus any accrued interest.

(10) Unacceptable Policies. Policies are unacceptable where: (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the Lot Owner or Mortgagee or Mortgagee's designee; or (ii) by the terms of the carrier's charter, by-laws or policy loss payments are contingent upon action by carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Lot Owner, Mortgagee or Mortgagee's designee from collecting insurance proceeds.

(11) Flood Insurance. The Development is not located in an area identified by the Housing and Urban Development as an area having special flood hazards. In the event that at some future time the Development should be declared to be in such a flood area, a blanket policy of flood insurance on the Development shall be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Living Units comprising the Development or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be in form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

5. Manager. The Association may carry out through a manager any of its functions which are properly the subject of delegation. Any manager so engaged may be an independent contractor or an agent or employee of the Association, shall be responsible for managing the Development for the benefit of the Association and the Owners, and shall to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

6. Terms of Management Agreement. Any agreement for professional management of the Development must provide for termination by either party without cause and without payment of a termination fee on at least ninety (90) days written notice.

7. Party Walls and Fences. Each wall or fence built as a part of the original construction of the Units which shall serve and separate any adjoining Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

The cost of reasonable repair and maintenance of a party wall or fence shall be shared in equal proportions by the Owners who make use of the wall or fence.

If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it and if the other Owner or Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, this provision does not preclude the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owners to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owners successors-in-title.

If a party fence is destroyed or damaged by fire or casualty, then to the extent that such damages is not covered by insurance and repaired out of the proceeds of insurance, the Association may, but is not required to, restore it in accordance with Section VI, 2. herein.

In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request thereof by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of these three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any rights of legal action that either party may have against the other.

## VII. USE RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units. No admission fees, charges for use, leases or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas.

2. Use of Lot and Living Unit. Each Lot has been or shall be improved with a Living Unit, each to be used only as a single-family residence. Valid home occupations that comply with the home occupation or business requirements of the City of Hurricane, or any successor entity, and that are in full compliance with Hurricane City Ordinances, may be allowed. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owner or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

3. Fences. No fences will be allowed unless installed by the Association or approved by the Architectural Review Committee.

4. Non-residential Use. No part of the Development shall be used for any commercial, manufacturing, mercantile, storing, vending (except as may be installed as a convenience by the Association), or other such non-residential purposes. Valid home based businesses or occupations are approved but they must comply with Hurricane City's home based business or occupation regulations and must be contained within the individual Living Unit.

5. Signs. No sign or billboard of any kind shall be displayed to the public view on any portion of the Development or any Lot or Living Unit. The only exception is the small standard real estate sign or similar sign advertising the Lot and Living Unit for sale or rent and only one of this type of sign shall be used and it must be placed at the front or street side of the Lot.

6. Quiet Enjoyment. No noxious or offensive trade or activity shall be carried on upon any Lot, Living Unit, or any part of the Development, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners of his respective Lot and Living Unit or which shall in any way increase the rate of insurance.

7. Temporary Structures, Equipment, Motor Vehicles, Etc. No structure of a temporary character such as a, basement, tent, shack, garage, barn or other out building shall be used or kept on any Lot at any time except as may be needed for construction purposes by the Association or Owner. Any temporary structure, construction equipment, and construction trailers utilized during construction shall be immediately removed from the Lot at the completion of construction activities. Parking of any motor vehicle, trailer, boat, recreational vehicle, or other similar vehicles or equipment in or along the edge of the streets is prohibited except that, passenger cars, motorcycles, and pickup trucks no greater than  $\frac{3}{4}$  ton which belong to Owners guests, may be parked along the edge of the street for a period of no longer than five (5) days while the guest is visiting the Owner. Motor vehicles, trailers, boats, recreational vehicles and other similar vehicles or equipment of an Owner may be parked in designated parking areas, driveways or behind the Living Unit on the rear portion of an individual Lot. No unregistered and/or inoperable motor vehicle may be parked or stored on any Lot unless inside an enclosed building or garage or behind the Living Unit in the rear or back portion of the Lot so as to be visually screened from view and not readily seen from the front or street side of the Living Unit.

8. Animals. No animals of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other quiet household pets may be kept on the Lots provided that they are not kept, bred or maintained for any commercial purpose or kept in unreasonable numbers. Under no circumstances shall the number of animals kept exceed what is allowed under Hurricane City Ordinance. Notwithstanding the foregoing, no animals or fowl may be kept on the Development which result in an annoyance or are obnoxious by noise, odor or otherwise to Lot Owners. The Association or Board may place conditions on the allowance of certain or specific animals including the right to cause the animal to be removed if it becomes an annoyance to other Lot Owners. Any animal that becomes an annoyance and has three (3) legitimate complaints (as determined by the Board) filed against it from any Lot Owner to the Board of Directors in any twelve (12) month period, must be removed from the Development. All pets/animals must be kept in a fenced or walled yard of the Owners Lot or in an appropriate cage or enclosure that is visually screened from view and not readily seen from the front or street side of the Living Unit. All animals must be kept on a leash in the Common Areas. Any animal subject to City licensing requirements must be properly licensed by the City of Hurricane.

9. Garbage Removal and Storage of Household Items. All rubbish, trash and garbage shall be regularly removed from the Lots and Development, and shall not be allowed to accumulate thereon. All clothes lines, refuse containers, wood piles, storage areas including storage sheds of any kind, machinery and equipment, mowers, garden tools, household items and other similar items shall be stored or kept inside the Living Unit or other enclosed outbuilding, or in an area which is visually screened from view so as not to be readily seen from the front or street side of the Living Unit. Grass and plant trimmings must be stored or kept in a properly designed and maintained organic compost bin and must be visually screened from view and not readily seen from the front or street side of the Living Unit. The intent of the Association is for the Living Units to look neat, uncluttered and attractive, especially from the front or street side and will promote the Lot Owners activities to accomplish this within the provisions of the Declaration, By-Laws, and Articles.

10. Electronic Antennas. No television, radio, or other electronic antenna, satellite dish or device of any type shall be erected, constructed, placed or permitted to remain on the exterior of any Living Unit or structure on the Lots with the exception of one digital cable television dish antenna commonly supplied by the local cable television providers in the area and/or a small antenna providing for wireless high speed internet use. Any exception must be approved in writing by the Association or Board after review by the Architectural Review Committee.

11. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations or any kind shall be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

12. Water Supply. No individual water supply system shall be used or permitted on any Lot or group of Lots. Domestic water shall not be used for irrigation purposes (unless irrigation water is not available at that Lot) and irrigation water shall not be used for potable purposes. All water (both domestic and irrigation) shall be carefully conserved and used in an efficient manner.

13. Exterior Lighting. No lights of a high-intensity nature (i.e., mercury vapor, sodium vapor, etc.) shall be used in any residential application. High-intensity lights are permitted on tennis courts or other recreational facilities but must not interfere with the quiet enjoyment of the

Development by other Owners and must be approved by the Architectural Review Committee or Board.

14. Water Coolers, Air Conditioners, Heat Pumps and Swimming Pools. All water coolers, air conditioners, heat pumps and their related structures and devices and all swimming pools shall be hidden from view so as not to be readily seen from the front or street side of the Living Unit and must be in compliance with all state and local regulations.

### **VIII. ARCHITECTURAL REVIEW**

1. Architectural Review Committee. The Board of Directors shall appoint an architectural review committee ("Committee") consisting of up to five members the function of which shall be to insure that all exteriors of Living Units and landscaping within the Development harmonize with existing surroundings and structures. The Committee need not be comprised of Owners. If such a Committee is not appointed or is not functioning, the Board itself shall perform the duties required of the Committee. Three members shall constitute a quorum and a majority vote shall control decisions of the Committee. However, such decisions shall not be inconsistent with the policies set forth in this Article or with the restrictions and provisions contained within this Declaration. Upon appointment of a five member committee, two (2) members of the Committee shall be for 1-year terms, with three (3) of the members being for 2-year terms. Thereafter, as the terms expire, each term shall be for two (2) years, so that appointments are staggered and there is continuity in the Committee.

2. Submission to Committee. No Living Unit, accessory or addition to a Living Unit, landscaping, or other improvement of a Lot shall be constructed or accomplished, and no alteration, repainting, or refurbishing of the exterior of any Living Unit or to any landscaping shall be performed, unless plans and specifications therefore have first been submitted to and approved by the Committee. The required plans and specifications for a Living Unit are outlined in paragraph 7 of this Section, otherwise plans and specifications for other improvements or additions need not be burdensome and shall be specified by the Committee. No excavation, filling or grading shall be undertaken upon any Lot without the written approval of the Committee. No Owner shall apply for a building permit from the City of Hurricane to undertake any of the above until first obtaining written approval from the Committee.

3. Standard for Decisions. In deciding whether to approve or reject plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Development conform to and harmonize with existing surroundings and structures and with this Declaration. The Committee shall establish rules and regulations consistent with the provisions of the covenants and restrictions contained herein, which rules and regulations may relate to such items as utility lines, pile concealment, propane tanks, trash receptacles, disposal of sanitary waste, solar panels, travel trailers, recreational vehicles storage, window covers, fences and walls, clothes lines, landscaping, exterior lighting, operation of engines, machinery and equipment, outside speakers and amplifiers, fires, guests and visitors, and other items which normally affect quality of life enjoyed by Lot Owners whose intent is to seek a peaceful environment in harmony with the surrounding natural beauty, wildlife and flora.

The general policy and aesthetic considerations which shall bind the Association, and regarding which the Association may further adopt, amend and consistently add to such covenants, pursuant to the vote of the Owners, are:

- a. To live in harmony with nature and ourselves;
- b. To maintain a quiet and peaceful neighborhood that is free from noise, air pollution, litter and vandalism;
- c. To utilize alternative means of heating, cooling, and other technology that promotes environmental balance and economy and conserves natural resources;
- d. To protect and enhance the living environment of all plants, native birds and animals within our community;
- e. To provide a variety of recreational, avocational, and aesthetic experiences for the Association's members and their guests; and
- f. To provide and maintain designated overlooks, vistas, picnic areas, walkways and available garden space for the homeowners and their guests.

4. Land Use and Building Type. All Lots shall be used only for residential purposes. The minimum square feet of each Living Unit shall be 1,200 square feet enclosed (not including the garage) and each Living Unit shall have at least an attached two-car garage. An additional 1,000 square feet shall be required which shall consist of a combination of decks, pergolas, edgeways, or other aesthetically pleasing outdoor living spaces. Each Lot shall have a "footprint" and the center of each Living Unit shall be located within 20% variance of that footprint. The footprint of each Lot shall be designated by the Association or its assigns in connection with each Lot sale. The basic design concept to be embodied in each site plan and home design is to coexist with the natural environment, to take advantage of all possible views but not to interfere with the views, aesthetic values and other appropriate uses of neighboring homes, and to blend in with the natural environment as much as possible. No old or secondhand structures shall be moved onto any of said Lots, it being the intentions thereof that all dwellings and other buildings to be erected on said Lots, within said Development shall be new construction of good quality, workmanship and materials. Manufactured (modular) housing shall not be permitted unless specifically approved by the Committee.

5. Easement, Slope and Drainage Control. Easements for installation and maintenance of utilities, drainage facilities, landscaping and ingress and egress are reserved as shown upon the Hurricane Garden Homes Master Plan for the Planned Unit Development, and on recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, alter slopes, create soil erosion or subsiding problems, or which may obstruct or retard the flow of storm or runoff water in natural and constructed draining channels. The easement and slope control areas on each Lot and all related improvements shall be maintained continuously by the Owner of the Lot.

6. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or rejected by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted. The Committee will explain in writing the reason(s) for any rejection and the Owner may then alter the plans and specifications and resubmit to the Committee for review.

7. Required Drawings for Living Unit. The following drawings shall be required for obtaining a permit to construct a Living Unit on a Lot and shall be submitted to the Committee:

a. Master Development Site Plan. Scale must be noted, along with location and name of street, Lot number, 2-foot topographic contours, property lines, setback dimensions, roof overhangs, fences and walls (including their height), location of utilities and detailed plans of grading, plantings, irrigation, garden structures, water elements, patios, pergolas, etc., for the full use and preservations of the Lot's natural features.

b. Elevations. Must show all exterior elevations of the proposed Living Unit and specify all materials to be used in construction including the colors, textures, types and colors of paint, etc.

8. Construction and Completion. Issuance of a permit to construct a Living Unit obligates the Owner to carry the construction to a stage of "substantial completion" within one year. "Substantial completion" means the exterior of the Living Unit is completed, the Living Unit could be lived in, and Hurricane City has issued a certificate of occupancy.

9. Disclaimer of Liability. Neither the Committee nor any Member thereof acting in good faith shall be liable to the Association or to any Owner or their agents, contractors or similar parties for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Development, or (d) any engineering or other defects in approved plans and specifications.

10. Non-waiver. The approval by the Committee of any plans and specifications for any work proposed or completed shall not constitute a waiver of any right of the Committee to reject any similar plans and specifications.

## IX. ENFORCEMENT

1. Enforcement. In addition to the remedies of Section V, paragraph 9, regarding failure to pay assessments, the Association shall have the following remedies. In the event of any default or violation by any Owner, occupant or other person of any provisions of this Declaration, of the Articles, Bylaws or rules and regulations of the Association or its successors, assigns or agents, Association, and/or any person to whose benefit this Declaration insures, may proceed at law or in equity to remedy and prevent the occurrence of continuation of any such default by:

- a. Injunction, whether affirmative or negative;
- b. Enforcement or foreclosures of the lien(s) herein provided, including the appointment of a receiver for the Lot and/or Living Unit, to take possession of the Lot and/or Living Unit and apply the rents received to payment of unpaid assessments and interest, fees & costs accrued thereon, and to sell the same as provided hereafter;
- c. Money damages;
- d. Specific performance;

- e. Judgment for payment of money and collection thereof;
- f. Any combination of remedies or any other relief. Any remedy or combination thereof may be obtained without notice and without regard to the value of the Lot and/or Living Unit;
- g. The Court, in any such action, shall award the successful party reasonable expenses in prosecuting the action including reasonable attorney's fees;
- h. The imposition of a \$10.00 per day fee for each default or violation which fee shall continue until the default or violation is corrected by the Lot Owner. The fee shall commence upon the Lot Owner receiving written notice by certified mail of the default or violation and if the default or violation is corrected within sixty (60) days of such date, the \$10.00 per day fee will be waived. Any fee not waived under this provision shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to the fees imposed along with any late fees, interest, and costs of collection; and (b) the personal obligation of the person who is the owner of such Lot at the time the fees are imposed.

In the event of any default or violation of this Declaration, of the Articles, Bylaws, or rules and regulations of the Association by any Owner or any other person, the Association or its agent or assign shall have the authority to correct such default by doing whatever may be reasonably necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against the defaulting Owner as a special assessment, which shall constitute a lien against the defaulting Owner's Lot, as provided herein. Upon receiving written notice of such default or violation the Lot Owner shall have ten (10) days to appeal such notice. Any appeal shall be made to the Board of Directors and shall be in writing. The Board shall review the appeal and respond to the Lot Owner within fifteen (15) days of receiving the appeal. If the Lot Owner disagrees with the decision of the Board, the Lot Owner can call for a special meeting of the Members as outlined in Article III, Section 2, 3, & 4 of the By-Laws of the Association and appeal his or her case to the Membership of the Association. The above remedies (a through h) are not waived or stopped with or during any appeal process.

## X. CONDEMNATION

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, the Board shall represent the Lot Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary to restore or replace any improvements on the remainder of the Common Areas. Upon completion of such work and payments in full therefore, any remaining proceeds of condemnation then or thereafter in the hands of the Association which are proceeds from the taking of any portion of the Common Areas shall be disposed of in such manner as the Association shall reasonably determine, with a majority vote, provided however, that in the event of a taking in which any Lot(s) or portions thereof are eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner(s) of such Lot(s) or portions thereof to such Owner(s) and any first Mortgagee(s) of such Lot(s), as their interests shall appear after deducting the proportionate share of said Lot(s) in the cost of debris removal.

## XI. RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first mortgagees shall be in effect.

1. Preservation of Regulatory Structure and Insurance. Unless the holders of 75% of all first mortgagees and 75% of the Lot Owners shall have given their prior written approval, the Association shall not be entitled:

- a. By act or omission to change, waive or abandon any regulations or enforcement thereof, pertaining to the Architectural design or the exterior appearance or maintenance of Living Units except under certain conditions provided in Section 2, Article VI, or the upkeep of the Common Areas of the Development;
- b. To fail to maintain fire and extended insurance coverage on insurable portions of the Common Areas on a 100% current replacement cost basis; or
- c. To use hazard insurance proceeds for losses to the Common Areas for other than to repair, reconstruct or replace such improvements on the Common Areas.

2. Preservation of Common Areas; Change in Method of Assessment. Unless the Association shall receive the prior written approval of at least 75% of all first mortgagees and 75% of the Lot Owners the Association shall not be entitled:

- a. By act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or
- b. To change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or Lot Owner.

Neither this Article XI nor that insurance provision contained in Article VI may be amended without prior approval of all first mortgagees.

3. Notice of Matters Affecting Security. The Association shall give written notice to any first mortgagee requesting such notice wherever:

- a. There is any default by the Owner of the Lot which is subject to the first mortgage in performance of any obligation under this Declaration, the Articles or Bylaws of the Association which is not cured within thirty (30) days after default occurs; or
- b. There occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or
- c. There is a condemnation proceeding or proposed acquisition of a Living Unit or any portion of the Common Areas within ten (10) days after the Association learns of the same; or

d. Any of the following matters come up for consideration or effectuation by the Association:

- i. Abandonment or termination of the Planned Unit Development established by this Declaration;
- ii. Material amendment of the Declaration or the Articles or Bylaws of the Association;
- iii. Any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

4. Notice of Meetings. The Association shall give to any first mortgagee requesting the same, notice of all meetings of the Association, and such first mortgagee shall have the right to designate in writing a representative to attend all such meetings.

5. Right to Examine Association Records. Any first mortgagee shall have the right to examine the books, records and audited financial statements of the Association.

6. Right to Pay Taxes and Charges. First 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 Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas. Upon making such payments, the first mortgagee shall be owed immediate reimbursement therefore from the Association.

7. Exemption from any First Right of Refusal. Any first mortgagee and any purchaser there from who obtains title to the Lot pursuant to the remedies provided in the first mortgage, or by foreclosure of the first mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale or otherwise shall be exempt from any "first right of refusal" which would otherwise affect the Lot.

8. Rights upon Foreclosure of Mortgage. Each holder of a first mortgage (or deed of trust) on a Lot and any purchaser who comes into possession of the Lot by virtue of foreclosure of the Mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a power of sale or otherwise will take the Lot free of, and shall not be liable for, any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

9. Restrictions Without Approval of Mortgagees. Except as to the Association's right to grant easements for utilities and similar or related purposes, the Development's Common Areas may not be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of 75% of first mortgagees on the Lots.

10. Mortgagees Rights Concerning Amendments. Except as concerns the right of the Association to amend the Declaration and related documents as contained in Article XII and Article XIII of the Declaration, no material amendment to the Declaration, Bylaws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least 75% of the mortgagees (based on one vote for each mortgagee) of the individual Lots have given their prior written approval to such amendment.

## XII. ASSOCIATIONS RIGHT TO AMEND

1. Associations Right to Amend. Association is hereby vested with the right to unilaterally amend the Declaration and/or the plat and the Bylaws and Articles of Incorporation of the Association as it may be reasonably necessary or desirable to do so, and subject to the amendment provisions of Section XIII, paragraphs 3 and 4.

2. Expansion of Definitions. In the event the Development is expanded, the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Development as so expanded e.g. "Development" shall mean the real property described in Article II of this Declaration plus any additional real property added by a supplementary declaration, and reference this Declaration shall mean this Declaration as so supplemented.

## XIII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Member 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 an officer of the Association. Any notice required or permitted to be given to the Committee may be given by delivering or mailing the same to the Chairperson or any member of the Committee.

2. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary to desirable to aid the Association in carrying out any of its functions or to insure that the Development is maintained and used in a manner consistent with the interests of the Members.

3. Amendment. Any amendment to this Declaration shall require:

- a. The affirmative vote of at least two-thirds (2/3) of all Members present in person or represented by proxy, which votes are entitled to be cast at a meeting duly called for such purpose; and
- b. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be:

At the first meeting called, the presence of Members or proxies entitled to cast sixty percent (60%) of all the votes 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 requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum that was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by an officer of the Association. In such instrument, an officer or director of the

Association shall certify that the vote required by this Section for amendment has occurred.

4. Consent in Lieu of Vote. In any case in which this Declaration requires for the authorization or approval of a transaction the assent or affirmative vote or a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing, including email, to such transactions from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Membership. The following additional provisions shall govern any application of this Section 4.

- a. All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.
- b. The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed or transmitted by email.
- c. Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose.
- d. Unless the consent of all Members whose memberships are appurtenant to the same Lot is secured, the consent of none of such Members shall be effective.

5. Reserve Fund. The Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

6. Lease Provisions. Any Owner may lease or rent his Lot or Living Unit, provided however, that any lease or rental agreement between a Lot Owner and a Lessee must be in writing and must provide, *inter alia* that:

- a. The terms of the lease shall in all respects be subject to the provisions of the Declaration; and
- b. Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.
- c. No lease or rental shall be for less than 30 days in duration.

7. Associations Rights Assignable. All or any portion of the rights of Association under this Declaration or in any way relating to the Development may be assigned.

8. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way effect the manner in which any provision hereof is construed. Whenever the context so requires the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any

gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

9. 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 Association, all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration and failure to comply with any of the foregoing shall be grounds for an action by the Association or any aggrieved Owner for the recovery of damages, or for injunctive relief or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

10. Multiple Ownership. There shall be no timeshares (as defined by Utah law) allowed in the Development.

11. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Washington County, Utah.

EXECUTED the day and year first above written.

**HURRICANE GARDEN HOMES OWNERS ASSOCIATION  
A UTAH NON-PROFIT CORPORATION**

**ELENA HALL, PRESIDENT**

I, Elena Hall, the President of Hurricane Garden Homes Owners Association, certifies that a vote has been taken by the Members of the Association as required by Section XII, 3 regarding amendment to this Declaration, and the results of the voting was in favor of amendment.

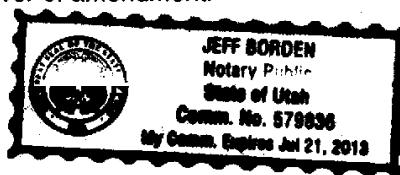
Elena Hall, President

**NOTARY:**

#### ACKNOWLEDGMENT

State of Utah )

County of Washington )



23 to be the signer of the foregoing document, and (he/she/they) acknowledged that (he/she/they) signed it. 

23

  
\_\_\_\_\_  
Notary Public for Utah  
My commission expires: July 21, 2013