

04-136-0501~0506, 0514, 0509~0513

04-132-0101~0104, 0115, 0107~0114

04-133-0201~0209

04-134-0301~0311, 0316, 0313

04-135-0401~0406

0422, 0417, 0411~0414

0416, 0421, 0418, 0419

RESTATED AND AMENDED
DECLARATION OF COVENANTS,
CONDITIONS & RESTRICTIONS OF
BARTON WOODS PUD
(A Planned Unit Development)

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
10/29/2012 04:21 PM
FEE \$246.00 Pgs: 86
DEP RT REC'D FOR HELGESEN WATERFAL
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October 2012

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**RESTATED AND AMENDED
DECLARATION OF COVENANTS,
CONDITIONS & RESTRICTIONS
OF
BARTON WOODS PUD**

(A Planned Unit Development)

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Barton Woods Planned Unit Development ("Restated Declaration") is made and executed by and between the Owners of Lots in Barton Woods Planned Unit Development ("Barton Woods") on the date shown below after being voted on and approved by the Owners in accordance with the governing documents.

RECITALS:

- A. Capitalized terms in this Restated Declaration are defined in Article I.
- B. The Lot Owners or Barton Woods Homeowners Association, Inc., a Utah non-profit corporation ("Association") of which the Owners are members hold legal title to the Lots, Common Area and improvements located in Davis County, Utah, more particularly described in Article II and Exhibit "A" of this Restated Declaration and includes the Common Area that is appurtenant to each Lot as shown on the plat Maps for Barton Woods, as recorded in the office of the County Recorder for Davis County, State of Utah. The various Lots described in this Restated Declaration are owned by the Lot Owners in fee simple.
- C. By this Restated Declaration the Lot Owners intend to continue the common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein conveyed as a Planned Unit Development consisting of single family residences in accordance with the terms hereof.
- D. Barton Woods was created by the "Enabling Declaration of Covenants, Conditions and Restrictions of Barton Woods Planned Unit Development" ("Enabling Declaration") recorded in the records of the Davis County Recorder as entry number 1024393 on March 24, 1993, in Book 1593, Page 59.

- E. The Enabling Declaration of Barton Woods was amended by the "Certificate of Amendment to Declaration of Protective Covenants, Conditions and Restrictions of Barton Woods Planned Unit Development," recorded in the records of the Davis County Recorder as entry number 1317752 on April 21, 1997, in Book 2120, Page 519.
- F. The Enabling Declaration of Barton Woods was amended by the "Certificate of Second Amendment to Declaration of Protective Covenants, Conditions and Restrictions of Barton Woods Planned Unit Development," recorded in the records of the Davis County Recorder as entry number 1709971 on December 6, 2001, in Book 2939, Page 594.
- G. The purpose and intent of this Restated Declaration is to restate, replace and amend the Enabling Declaration and the various amendments to that document (which Enabling Declaration, amendments and Association Bylaws shall collectively be referred to herein as the "Governing Documents").

NOW, THEREFORE, to accomplish the Owners' objectives, this Restated and Amended Declaration of Covenants, Conditions, and Restrictions of Barton Woods PUD is hereby adopted. The Governing Documents are hereby restated, replaced and amended by this Restated Declaration. It is the intent of the Owners that this Restated Declaration replace all prior Governing Documents and that this Restated Declaration be the sole set of restrictive covenants governing Barton Woods. Regardless of any language herein to the contrary, the following are not renounced, rescinded, revoked, replaced or amended: the Maps (as defined herein); the submission and dedication of the real property described in Exhibit "A" to the provisions of this Restated Declaration; the ratification, approval and incorporation of the Barton Woods Homeowners Association, Inc., a Utah nonprofit corporation; the Articles of Incorporation on file with the State of Utah; and, any other provision, paragraph, or section that is contained in the Governing Documents and which is required to maintain the legal status of the Project which, if repealed, would nullify the legal status of the Project or in any manner impede the ability of the Association to properly function as described herein.

It is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Restated Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Association and all Lot Owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

The statements set forth in the above recitals are hereby approved and accepted as being accurate and shall constitute part of this Restated Declaration.

ARTICLE I

DEFINITIONS

When used in this Restated Declaration, including the recitals hereto, the following terms shall have the meaning indicated:

- 1.01 **“Association”** shall mean Barton Woods Homeowners Association, Inc., a Utah Non-Profit corporation, formed for management of the Project and more fully described in Article IV, below.
- 1.02 **“Board of Directors” and “Board”** shall mean the Board of Directors of the Association, or a Board of Directors specifically designated as such by the Board of Directors of the Association. The Board shall have and exercise the rights, powers and responsibilities designated and delegated in this Restated Declaration and in the Articles of Incorporation, the Bylaws and rules and regulations of the Association.
- 1.03 **“Bylaws”** shall mean the Bylaws of the Association, attached to this Restated Declaration as Exhibit “B”.
- 1.04 **“Home”** shall mean a dwelling or residence constructed on one of the Lots.
- 1.05 **“Lot”** shall mean each individual lot within the Project, as shown on the Map, which lot may or may not be improved with a Home and which may or may not include improvements of the type designated on the Map and/or authorized by Bountiful City, Utah.
- 1.06 **“Manager”** shall mean the Board of Directors of the Association or such person or entity designated by the Board of Directors to manage the Project.
- 1.07 **“Map” and “Maps”** shall mean the official subdivision plat maps filed and recorded in the Official Records of the Davis County Recorder.
- 1.08 **“Mortgage”** shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.
- 1.09 **“Mortgagee”** shall mean any person named as a Mortgagee and shall include a beneficiary under or holder of a deed of trust.
- 1.10 **“Owner”** shall mean any person with an ownership interest in a Lot, together with the undivided interest in the common areas as defined herein.
- 1.11 **“Person”** shall mean any legal entity as well as natural person.
- 1.12 **“Project”** shall mean Barton Woods Planned Unit Development.

- 1.13 **“Restated Declaration”** shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Barton Woods Planned Unit Development.
- 1.14 **“Subject Property”** shall mean the real property underlying the Project, described in Article II below.

ARTICLE II

PROPERTY DESCRIPTION

- 2.01 The Property within the Project which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions, easements and restrictions of this Restated Declaration and the Plat consists of the following described real property situated in Davis County, State of Utah: See Exhibit “A”.

ARTICLE III

COVENANTS, CONDITIONS AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions and restrictions:

- 3.01 **Name.** The Project, as submitted to the provisions of this Restated Declaration, shall be known as Barton Woods Planned Unit Development.
- 3.02 **Description of Lots.** The Project consists of individual Lots, each of which may or may not be improved and may or may not include improvements authorized on the Map and/or by the City of Bountiful, Utah. The improvements on the Lots consist of single family or one-half (½) of a duplex building with the other one-half (½) of the structure being on an adjoining Lot. The exterior of all buildings will be constructed of brick on the lower part, with the upper part being wood, stucco and/or such other materials authorized by the Board, all improvements shall be constructed in a style and of materials architecturally compatible with the other improvements on the Project.
- 3.03 **Description of Lots.** The Lots, their locations, and approximate dimensions are indicated on the Map.
- 3.04 **Common Areas and Facilities.** The common areas and facilities of the Project shall be and are the roads, grass and lawn area not included within a Lot, specifically designated public parking areas, if any, and any and all other common areas and facilities designated as such. The secondary water lines shall be part of the Common Areas, most of which lines lie in the roads maintained by the Association. The secondary water lines shall be maintained by the Association to the point where a secondary water line connects to an Owners sprinkler system, at which point it will no longer be a part of the Common Areas.

- 3.05 **Lots and Rights to Common Areas and Facilities Inseparable.** The percentage of undivided interest in the common areas and facilities shall not be separated from the Lot to which it appertains and, even though not specifically mentioned in the instrument of transfer or conveyance, such percentage of undivided interest and such right of exclusive use shall automatically accompany the transfer and conveyance of the Lot to which they relate.
- 3.06 **Voting-Common Expense-Ownership in Common and Facilities.** Each Owner shall have an equal and uniform percentage of undivided ownership in the Common Areas and facilities for all purposes including, but not limited to, voting and sharing of the common expenses. The Association shall be the record owner of all common areas and facilities.
- 3.07 **Easements and Encroachments.** If any portion of the common areas and facilities or any fences or walls adjacent to a Lot boundary in the Project are partially or totally destroyed, and then rebuilt or improved, maintained, painted, or repaired, encroachments shall be permitted as may be necessary, desirable or convenient upon the Lots, and easements for such encroachments and for the maintenance of the same shall exist for such period of time as may be necessary, desirable or convenient. In addition, encroachments shall be permitted to the Association or its designate upon the Lots and the common facilities as may be necessary, convenient or desirable within the Project for the installation, placing, removal, inspection and maintenance of utility lines, utility service facilities, and Common Areas; for regular repairs and maintenance of exterior portions of improvement on the Lots; for any emergency or necessary repairs; and for lawn, trees, shrubbery and yard care or maintenance. Easements for such encroachments shall exist for such period of time as may be necessary, convenient or desirable.
- 3.08 **Amendments.** In addition to the amendment procedure provided by law and elsewhere in this Restated Declaration, the Lot Owners shall have the right to amend this Restated Declaration and/or the Map upon the approval and consent of Owners of two-thirds (2/3) of the undivided interests in the Project, with or without a meeting.

ARTICLE IV

BARTON WOODS HOMEOWNERS ASSOCIATION, INC.

- 4.01 **Owners Association.** The Project shall be administered by a Utah non-profit corporation named Barton Woods Homeowners Association, Inc. An Owner of a Lot shall automatically become a member of the Association and shall remain a member for the period of his or her ownership.
- 4.02 **Association Management.** The Association shall conduct the general management, operation and maintenance (see Maintenance Chart attached as Exhibit "C") of the Project and of the common areas and facilities and the enforcement of the provisions of

this Restated Declaration, the Articles of Incorporation and Bylaws (attached as Exhibit "B") of the Association, and rules and regulations adopted thereunder.

ARTICLE V

DESIGN REVIEW BOARD

- 5.01 **Design Review Committee.** The purpose of the Design Review Committee (the "Committee") shall be to create, maintain and improve Barton Woods Planned Unit Development as a pleasant and desirable environment, to establish and preserve a harmonious design for the community and to protect and promote the value of the Property, exterior design, landscaping and changes or alterations to the existing use of the Property.
- 5.02 **Creation of Design Review Committee.** The Committee will consist of at least three members but may have as many members as may be appointed by the Board from time to time in accordance with the Association's Bylaws. The regular term of office for each Committee member shall be one year, coinciding with the fiscal year of the Association. Any such Committee member may be removed with or without cause by the Board at any time by written notice to such appointee. A successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member.
- 5.03 **Powers of Design Review Board.** The Committee is hereby authorized to perform the design review functions prescribed in this Restated Declaration and the Association's Bylaws and to carry out the provisions set forth therein. The Committee is authorized to retain the services of one or more consulting architects, landscape architects or urban designers, who need not be licensed to practice in the State of Utah, to advise and assist the Committee in performing its duties.
- 5.04 **Tree Trimming.** Trimming or topping of trees in the Common Area is prohibited without written authorization from the design committee.
- 5.05 **Review Fee.** At its option, the Committee may require that the Lot Owner submitting plans for review pay a design review fee to the Committee before any Home and landscape plans shall be reviewed or approved by the Committee. The fee shall be set by the Committee and will be used by the Committee to pay the costs of architects and other professionals retained by the Committee to review Home plans. Lot Owners are encouraged to submit preliminary-schematic drawings to the Committee as soon as possible in order to avoid unnecessary revisions and delay in construction.
- 5.06 **Decision.** The decision of the Design Review Committee shall be made within thirty (30) days after receipt by the Design Review Committee of all materials required by the Design Review Committee unless such time period is extended by mutual agreement. The decision shall be in writing and if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision

of the Design Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Design Review Committee.

- 5.07 **Approval.** Any request for approval of a proposed Improvement to Property shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Design Review Committee within thirty (30) days after the date of receipt by the Design Review Committee of all required materials.

The Committee may reject any Home and landscape plans it deems do not comply with the provisions of this Restated Declaration. The decision of the Committee may be reviewed by the Board on appeal by the Owner or at the Board's own discretion. No construction may begin on any Lot until the Committee has approved the Home and landscape plans. The Committee may also, upon approval by the Board, adopt rules regarding the trimming of trees.

- 5.08 **Security Deposit.** The Committee shall not approve any Home and landscape plans until the Owner or the Owner's Contractor delivers a cashier's check in the amount of \$5,000 to the Committee to serve as a Security Deposit. The Security Deposit shall be placed in the Association's checking account and may be used by the Committee, in its discretion, to cure any damage to parkstrips, sprinkler lines, pipes, sidewalks, roads, Lots or any other Common Areas that may occur as a result of the Contractor's construction of the Owner's improvements. If the Committee determines that any damage to parkstrips, sprinkler lines, pipes, sidewalks, roads, Lots or any other Common Areas has occurred as a result of the construction, whether by the Contractor, a subcontractor, the Owner, visitor, or other individual, the Committee shall make a finding of such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the Owner and the Contractor that unless corrective action is taken within fourteen days, the Committee may cause such action to be taken and pay for such action with monies from the Security Deposit. If the Security Deposit is insufficient to cure any damage, both the Owner and the Contractor may be billed for the balance due. The Committee is authorized and empowered to cause an action to be taken for collection of any balance due under this paragraph and the costs thereof shall be assessed against such Owner and his or her Lot as a maintenance charge and shall be secured by the assessment lien. Any portion of the Security Deposit that is not used to cure any damages shall be returned to the Owner or the Owner's Contractor upon completion of the construction of the Owner's improvements.

- 5.09 **Enforcement.** If an Owner's construction deviates from his or her approved plans, the Committee may require that the Owner comply with the approved plans. If the Committee determines that any construction does not comply with the approved plans, the Committee shall notify the Owner and require that corrective action be taken within fourteen days. If at the expiration of said fourteen-day period of time the requisite corrective action has not been taken, the Committee shall be authorized and empowered to cause such action to be taken and the cost and legal fees thereof shall be

assessed against such Owner and his or her Lot as a maintenance charge and shall be secured by the assessment lien.

ARTICLE VI

LIMITATION OF USE OF LOTS AND COMMON AREAS

- 6.01 **Purposes.** Every Lot within the Project shall be used for single family residential living purposes, such purposes to be confined to approved residential buildings within the Subject Property, whether such Lot contains one-half (1/2) of a structure or a self-standing residence building. For purposes of this Restated Declaration a single family shall not include more than three unrelated people. No Lots within the Project shall be occupied or used for commercial or business purposes; provided, however, that nothing in this paragraph 6.01 shall be deemed to prevent any Owner or the Owner's duly authorized agent from renting or leasing the Owner's residential building from time to time, subject to all of the provision of this Restated Declaration.
- 6.02 **No Obligations.** Except for portions of the Project expressly designated on the Map, there shall be no obstructions of the common areas, and nothing shall be stored in the common areas without the prior consent of the Board of Directors.
- 6.03 **Alterations, Additions and Attachments.** No building, fence, wall, mailbox, tennis court, hot tub or similar structure, swimming pool or other structure, satellite dish or receiver, or outside antenna shall be commenced, erected, altered, placed or permitted to exist on any portion of the Project, without the prior written approval of the Design Review Board. All buildings, alterations, improvements, additions and maintenance on the Subject Property shall be made in a workmanlike manner and shall be architecturally compatible with the rest of the Project. The following are some of the specific items that must be architecturally compatible:
- (a) Stucco- must be compatible with the overall design of the Association.
 - (b) Connected residences- must each have the same color stucco and shingles.
 - (c) Roof Colors- must be compatible with the overall design of the Association.
 - (d) Brick- must be compatible with the overall design of the Association.
 - (e) Garage Doors- must be compatible with the overall design of the Association.
 - (f) Mailboxes- must be the same design as all mailboxes throughout the Project.
- 6.04 **Easements.** In addition to any easements of record on the Project, the Association shall be entitled to easements on all Lots and other portions of the Project for drainage facilities and for installation, maintenance, placing, removal, inspection, repair and improvement of utilities and common areas and facilities, for necessary or emergency

repairs, and for maintenance and care of lawns, trees, shrubbery up to the edge of all buildings constructed in the Project, and such easements shall exist whether or not they are specified on the recorded Map, and in accordance with paragraph 3.7 of Article III, above.

- 6.05 **No Animals.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot or in the common areas, except that dogs, cats and other household pets (such as birds and small children's pets) under the weight of fifteen pounds may be kept provided that they are not kept, bred, or maintained for any commercial purpose and, provided further, that they do not become an annoyance or nuisance, for any reason, to any Owner or resident of a Lot. Such animals as are permitted shall be strictly controlled and kept pursuant to Bountiful City ordinances and regulations, and the rules and regulations of the Board of Directors. Any animals not mentioned above may only be raised, kept, or bred on any Lot if the Owner obtains prior written approval from the Board of Directors. In addition, the Owners of each animal shall be solely responsible for the clean-up of that animal's waste and for repair of all damage cause by that animal.
- 6.06 **No Offensive Activity.** No noxious or offensive activity shall be carried on in any Lot or in the common areas, nor shall anything be done therein which may be or become a nuisance to the other Owners. This section shall include, but not be limited to, cars that are inoperable, unregistered, or unlicensed.
- 6.07 **Nuisance.** It shall be the responsibility of each Owner and Resident to prevent the creation or maintenance of a nuisance in, on or about the Project. It shall also be the responsibility of each Owner and Resident to abate promptly any nuisance which may have been created. For purposes of this subsection, the term "nuisance" means at least:
- (a) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about his Lot or the Common Areas and Facilities;
 - (b) The storage of any item, property or thing that causes any Lot or the Common Area or Facilities to appear to be in an unclean or untidy condition or that will be noxious to the senses;
 - (c) The storage of any substance, thing or material upon any Lot or in the Common Areas and Facilities that emits any foul, unpleasant or noxious odors, or that causes any noise or other condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
 - (d) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas and Facilities;
 - (e) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

- (f) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees;
 - (g) Making disruptive amounts of noise in, on or about any Lot or the Common Area and Facilities, especially after 10:00 p.m. and before 8:00 a.m.; and
 - (h) Creating excessive amounts of traffic in, on or about any Lot or the Common Area and Facilities, especially after 10:00 p.m. and before 8:00 a.m.
- 6.08 **Construction in Common Areas and Lots.** Nothing shall be altered or constructed in or removed from the common areas or Lots, except upon the written consent of the Design Review Committee.
- 6.09 **Rules.** The Board of Directors is authorized to adopt rules for the use of the common areas and Lots, which rules shall be in writing and furnished to the Owners.
- 6.10 **Dumping of Garbage.** No Lot or portion of the common areas shall be used or maintained as a storage or dumping ground for rubbish, junk, trash, garbage or other waste, nor shall any rubbish, trash, papers, junk or debris be burned within the Project. All trash, rubbish, junk, garbage or other waste within the boundaries of the Project shall be kept only in sanitary containers on a temporary basis until the containers are emptied or removed. Each Lot shall be kept free of trash and refuse by the Owner of such Lot. No Person shall allow any unsightly, unkept, unsafe or dangerous conditions to exist on or in any Lot, and each Lot shall be kept in a clean and maintained condition.
- 6.11 **Excavation.** No excavation for stone, gravel or earth shall be made on the Subject Property unless such excavation is made in connection with the erection of a building, structure, landscaping or other improvement thereon.
- 6.12 **Parking of Vehicles**
- (a) Garages shall not be used for storage of personal items in a way that does not also allow a vehicle to be parked in the garage.
 - (b) No vehicles shall be parked overnight on any of the streets or roadways in the Project or on any common areas of the Project, except vehicles may be parked on the streets within the Project for not more than one (1) week out of any twelve (12) week period and upon such portions of the Project specifically designated for this purpose on the Association Map or by the Board of Directors.

- (c) Due to the need to snow plow, no vehicles may be parked on the streets within the Project between November 1 and March 31.
- (d) No boats, campers, trailers, large trucks, motor homes, or similar large items shall be parked or stored on the street, any driveway, Lot or in the common areas.
- (e) Unregistered or inoperable vehicles shall not be parked or stored on any driveway, Lot or in the Common Areas, unless parked inside an Owner's garage.

ARTICLE VII

INSURANCE

- 7.01 **Obtaining of Liability Insurance Policies.** The Board of Directors shall obtain and maintain, at all times, a policy or policies insuring the Association, the Board of Directors, the Lot Owners and the Manager against any liability to the public or to the Owners of Lots and common areas, and their invitees or tenants, incident to the Ownership and/or use of the common areas of the Project, issued by such insurance companies and with such limits of liability as determined by the Board of Directors. Each such policy or policies shall be issued on the comprehensive liability basis and shall provide cross-liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as in respect to his, her or their action against another named insured.
- 7.02 **Fidelity Insurance or Bond & Director's and Officer's Insurance.** The Board of Directors shall obtain fidelity insurance or a bond in such amounts and in such forms as the Association deems appropriate to cover against dishonesty of employees or the Manager, destruction or disappearance of money or securities, and forgery, and shall purchase as a Common Expense adequate director's and officer's liability insurance (aka Errors and Omissions Insurance).
- 7.03 **Other Insurance.** In addition, the Board of Directors may obtain insurance for such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to common areas or other Projects similar in construction, design and use.
- 7.04 **Owner's Insurance.** Each Lot Owner shall obtain insurance on his or her Lot and Home, and the Association shall have no responsibility to provide any property insurance coverage for any Owner or for any Owner's Lot Home.

ARTICLE VIII

COMMON ASSESSMENTS

- 8.01 **Payment of Expenses.** Each Lot Owner shall pay to the Board of Directors that Owner's portion of the costs and expenses required and deemed necessary, and upon the terms of payment determined by the Board of Directors, in connection with water, sewer and other utility services and connection fees (if not directly metered or billed to individual Lots) to the Project and costs and expenses deemed necessary to manage, maintain and operate the common areas and facilities of the Project, and may include, among other things, the cost of management; taxes; special assessments; casualty and public liability insurance premiums; common lighting, if any; landscaping and the care of grounds, both of common areas and lawns and shrubbery on individual Lots; maintenance, repairs and renovations of common areas and facilities; snow removal, if any; wages and charges; legal and accounting fees; expenses and liabilities incurred by the Board of Directors under or by reason of this Restated Declaration, the Articles of Incorporation or Bylaws of the Association; the payment of any deficit remaining from a previous period; and the creation of a reasonable contingency or other reserve or surplus relating to this Project. Such payments shall be made upon the terms, at the time, and in the manner provided without deduction of any off-sets or claims which the Owner may have against the Board. If any Owner shall fail to pay any installment by the 15th day of the month it is due, the Association shall assess a monthly late fee, not in excess of \$50.00 per month, in an amount as established by the written policy of the Board. In the event the Board does not adopt a written policy establishing a late fee, any Owner who fails to pay any installment within one (1) month from the time when it becomes due shall pay interest thereon at the rate of one and one-half percent (1-1/2%) per month from the date when such installment shall become due to the date of the payment thereof. Such late fees shall be paid in addition to all costs and expenses, including reasonable attorney fees, incurred by the Board of Directors in collecting such unpaid assessments, whether or not formal legal proceedings have been commenced.
- 8.02 **Collection of Assessments.** The Board of Directors may, from time to time, up to the close of the year of which such cash requirements have been so fixed or determined, increase or diminish the amount previously fixed or determined for such year. The Board may include in the cash requirements, for any year, any liabilities or items of expense which accrued or became payable in the previous year or which might have been included in the cash requirements, for a previous year, but were not included therein, and also any sums which the Board of Directors may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.
- 8.03 **Determination of Amounts.** The pro-rata portion payable by the Owner in and for each year or portion of year shall be apportioned equally among and assessed equally to all Lots. It shall be calculated by multiplying the aggregate amount of cash requirements for such year, or portion of year, by the percentage of undivided interest

in the common areas facilities as shown on the attached Exhibit "D". All such assessments, together with the additional sums accruing under this Restated Declaration, shall be payable monthly in advance, or in such payments and installments as shall be required by the Board of Directors, and at such times as shall be provided by the Board of Directors.

- 8.04 **Unimproved Lots.** All unimproved Lots shall be assessed the monthly operating and maintenance assessments payable under this Restated Declaration in the same manner and in the same amount as improved Lots. Also, special assessments for such things as capital improvements shall be imposed uniformly on all improved and unimproved Lots.
- 8.05 **Powers of Board of Directors.** The Board of Directors shall have discretionary powers as provided in this Restated Declaration and in the Articles of Incorporation and Bylaws of the Association, to prescribe the manner of maintaining the operation of the Project, and to determine the cash requirements of the Association to be paid as aforesaid by the Owners under this Restated Declaration. Every such reasonable determination by the Board within the bounds of this Restated Declaration shall be final and conclusive as to the Owners, and any expenditures made by the Board within the bounds of this Restated Declaration shall be deemed, as against the Owners, necessary and properly made for such purpose.
- 8.06 **Collection of Assessments.** Each monthly assessment and each special assessment shall be a separate, distinct and personal debt and obligation of the Owner against whom the same is assessed at the time the assessment is made, and shall be collectible as such. Suit to recover money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the same. The amount of assessment, whether regular or special, assessed to the Owner of any Lot plus late fees authorized in section 8.01 above and the costs, including reasonable attorney fees, shall become a lien upon such Lot upon recordation of notice of assessment. Said lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:
- (a) Tax and special assessment liens on the Lot in favor of any assessment authority, or special district; and
 - (b) Encumbrances on the Owner's Lot and such Owner's interest in the common areas recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

A certificate executed and acknowledged by a majority of the Board of Directors stating the indebtedness secured by the lien upon any Lot in the Project hereunder shall be conclusive upon the Board of Directors and the Owners as to the amount of such indebtedness on the date of the certificate, in favor of all Persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or any encumbrancer or prospective encumbrancer of a Lot upon request at a reasonable fee,

not to exceed the amount permitted by law. Unless the request for a certificate of indebtedness shall be complied with within ten (10) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien held by the person making the request. Any encumbrancer holding a lien on the Lot may pay any unpaid common expenses payable with respect to such Lot and upon such payment such encumbrancer shall have a lien on such Lot for the amounts paid of the same rank as the lien of his encumbrance.

Upon payment of a delinquent assessment concerning which such a certificate has been so recorded, or other satisfaction thereof, the Board of Directors shall cause to be recorded, in the same manner as the certificate of indebtedness, a further certificate stating the satisfaction and the release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale by the Board of Directors or by a bank or trust company or title insurance company authorized by the Board, such sale to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or Mortgages or in any manner permitted by law. In any foreclosure of sale, the Owner shall be required to pay the costs and expenses of such proceedings and reasonable attorney's fees. In case of foreclosure, the Owner shall be required to pay a reasonable rental for the Lot from the date the foreclosure action is filed with the Court having jurisdiction over the matter, and the Plaintiff in the foreclosure action shall be entitled to the appointment of a receiver, at the time such action is filed, to collect the rental without regard to the value of the mortgaged security. In any foreclosure or sale, the Owner shall also be required to pay the costs and expenses of such proceedings and reasonable attorney's fees. The Owners hereby appoint, as provided in U.C.A. § 57-8a-212, Richard W. Jones, attorney, as trustee for purposes of foreclosing liens for nonpayment of assessments, and authorizes the Board to appoint a successor trustee, for purposes of foreclosure as if a deed of trust were executed. The Board of Directors or Manager shall have the power to bid on the Lot at foreclosure or other sale and to hold, lease, Mortgage and convey the Lot

8.07 **Combination of Lots**

- (a) Lots 105 and 106 shall be treated as one Lot for building, voting and assessment purposes and shall be designated as "Lot 105."
- (b) Lots 407 and 408 shall be treated as one Lot for building, voting, and assessment purposes and shall be designated as "Lot 407."
- (c) Lots 409 and 410 shall be treated as one Lot for building, voting, and assessment purposes and shall be designated as "Lot 410."
- (d) Lots 507 and 508 shall be treated as one Lot for building, voting, and assessment purposes and shall be designated as "Lot 507."

- (e) Barton Woods shall consist of 56 Lots. The current voting percentage and interest in the Common Areas for all Lots in Barton Woods is attached to this Restated Declaration as Exhibit "D".

ARTICLE IX

PARTY WALLS

- 9.01 **General Rules of Law to Apply.** Certain of the buildings constructed on Lots have common or party walls with adjacent buildings, Homes and Lots. The boundary between two adjacent buildings, Homes and Lots shall be the vertical boundary running through the center of the party wall, equidistant from the plane joining and along the outermost surfaces of studs and structural beams making up the party wall. Each Owner of a Lot that has a building adjoining another building on a separate Lot is hereby granted an easement of support and shelter over the portion of any party or retaining wall on the adjoining Lot. Each Owner covenants with the other to maintain the party wall in a structurally sound and weather tight state and to continue to provide the support and shelter that presently exists and as may be necessary to maintain the integrity of each building
- 9.02 **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- 9.03 **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.
- 9.04 **Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- 9.05 **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- 9.06 **Disputes Over Party Walls.** In the event of any dispute arising concerning a party wall, the dispute resolution provision set forth herein shall be used by the parties to resolve the matter.

ARTICLE X

COLLECTION OF DELINQUENT HOA FEES FROM TENANTS

In the event an Owner is delinquent in the payment of assessments, the Association may require a tenant under a lease with a Lot Owner to pay the Association all future lease payments due to the Lot Owner.

- 10.01 **Collecting HOA Fees from Renters.** If the Owner of a Lot who is leasing the Lot fails to pay any assessment for a period of more than 60 days after it is due and payable, the Board may require the tenant to pay to the Association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid.
- 10.02 **Notice to Lot Owner.** The Board shall give the Lot Owner written notice of the Board's intent to demand full payment of all delinquent assessments from the Owner's tenant. This notice shall be sent by regular first class mail to the last known address of the Owner, as provided on the records of the Davis County recorder or as provided by the Lot Owner to the Board. The notice shall inform the Owner that all delinquent assessments must be paid to the Association within fifteen (15) days from the date the notice is mailed to the Lot Owner, and if payment is not received within fifteen (15) days, that the Board shall notify the tenant that future lease payments shall be paid to the Association and not to the Lot Owner. The notice shall also state:
- (a) that due to the Lot Owner's failure to pay an assessment within the required time, the Board has notified the Lot Owner of the Board's intent to collect all lease payments until the amount owing is paid;
 - (b) the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees;
 - (c) that the Association intends to demand payment of future lease payments from the Lot Owner's tenant if the Lot Owner does not pay the amount owing within 15 days.
 - (d) the tenant's payment of lease payments to the Association does not constitute a default under the terms of the lease with the Lot Owner.
- 10.03 **Notice to Tenant.** If the Lot Owner fails to pay the amount of the assessment due within the fifteen (15) day period specified in the notice, the Board shall deliver written notice to the tenant informing the tenant that all future payments due from the tenant to the Owner shall be paid to the Association. The notice to the tenant shall be served on the tenant by: (1) posting a notice on the door of the tenant's Home, (2) mailing a notice to the tenant at the address of the Home, or (3) delivering notice personally to the tenant. A copy of the notice shall be mailed to the Lot Owner. The notice provided to the tenant shall also state that:

- (a) due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the Board's intent to collect all lease payments due to the Association until the amount owing is paid;
 - (b) until notification by the Association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the Owner are to be paid to the Association; and
 - (c) the law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing is paid.
 - (d) payment by the tenant to the Association will not constitute a default under the terms of the lease agreement with the Lot Owner/landlord. If payment is in compliance with this notice, suit or other action may not be initiated by the Owner against the tenant for failure to pay.
- 10.04 **Disbursement of Funds Collected.** All funds paid to the Association pursuant to the notice shall be disbursed to the Association. If, after the Association is paid in full, there is any remaining balance, it must be paid to the Lot Owner within five business days of payment in full to the Association.
- 10.05 **Terminating Collection.** Within five business days of payment in full of the assessment, including any interest or late payment fee, the Board must notify the tenant in writing that future lease payments are no longer due to the Association. A copy of this notification shall be mailed to the Lot Owner.
- 10.06 **Definition of Lease.** As used in this section, "lease" or "leasing" means regular, exclusive occupancy of a Lot by any Person or Persons, other than the Lot Owner, for which the Lot Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

ARTICLE XI

RESERVE ANALYSIS

- 11.01 **Reserve Analysis Required.** The Board shall cause a reserve analysis to be conducted no less frequently than every six years. The Board's initial reserve analysis must be prepared prior to June 30, 2012. The Board shall thereafter review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.
- 11.02 **Restricted Use of Reserve Funds.** The Board may not use money in a reserve fund:

- (a) for daily maintenance expenses, unless a majority of the Lot Owners vote to approve the use of reserve fund money for that purpose; or
 - (b) for any purpose other than the purpose for which the reserve fund was established, unless a Majority of the Owners vote to approve the use of reserve fund money for another purpose.
- 11.03 **Creation of Reserve Fund.** The Board shall annually, either at the annual meeting of Owners or at a special meeting of Owners, (i) present the reserve study to the Owners, and (ii) provide an opportunity for Owners to discuss reserves and to vote on whether to fund the reserve fund and, if so, how to fund it and in what amount. The Board shall keep minutes of each such meeting held under this Section and indicate in the minutes any decision relating to funding the reserve fund. For purposes of this Section 11.03 only, a quorum for purposes of voting to fund the reserve fund shall be those Owners who are present at the meeting at which the reserve study is presented and at which its funding is presented for a vote, unless fewer than thirty-three percent (33%) of the Owners are present, in which case, no vote shall be taken.
- 11.04 **Assessment.** The Board shall cause an Assessment to be made against all Owners consistent with the vote of the Owners regarding the manner and amount of funds to be placed in the reserve fund, which Assessment shall be collected on the same terms and conditions as other Common Expenses. The Board shall maintain a reserve fund separate from other funds of the Association. This Subsection may not be construed to limit a Board from prudently investing money placed in a reserve fund account.
- 11.05 **Definition.** As used herein, “reserve analysis” means an analysis to determine:
- (a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas and facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the Association of Lot Owners; and
 - (b) the appropriate amount of any reserve fund.

ARTICLE XII

MORTGAGE PROTECTION

Notwithstanding all other provisions herein to the contrary:

- 12.01 **Rights of First Refusal.** Any “right of first refusal” which may be granted herein shall not impair the rights of the first Mortgagee of a Lot to:
- (a) Foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, or

- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or
 - (c) To sell or lease a Lot acquired by a Mortgagee.
- 12.02 **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee.
- 12.03 **Consent of Mortgagees.** Unless at least two-thirds (2/3) of the first Mortgagees (based upon one vote for each first Mortgage owned) or Owners (other than the sponsor, developer or builder) of the individual Lots in the Project have given their prior written approval, the Association or any corporation or trust established by the Association shall not be entitled to:
- (a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any common areas or facilities owned, directly or indirectly, by the Association or any corporation or trust established by the Association, for the benefit of the Lots in the Project (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common areas and facilities by the Project shall not be deemed a transfer within the meaning of this clause);
 - (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;
 - (c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of any common property party walls or common fences or driveways, or the upkeep of lawns and plantings in the Project;
 - (d) Fail to maintain fire and extended coverage on insurable common areas and facilities on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).
 - (e) Use hazard insurance proceeds for losses to any common areas and facilities other than the repair, replacement or reconstruction of such common areas and facilities.
- 12.04 **Taxes and Expenses.** First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common areas and facilities and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such

common areas and facilities, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

- 12.05 **Notice of Default by Individual Lot Borrower.** A first Mortgagee of a Lot, upon request, shall be entitled to written notification from the Association of any default in the performance by the individual Lot borrower of any obligation under this Restated Declaration, or other constituent documents of this Planned Unit Development, which is not cured within sixty (60) days.
- 12.06 **Management Agreements.** Any agreement for professional management of the Project, or any other contract providing for services of the developer, sponsor or builder, may not exceed three (3) years. Any such agreement must provide for by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.
- 12.07 **No Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of common areas and facilities.

ARTICLE XIII

INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall provide any indemnification required or permitted by the laws of Utah and shall indemnify Directors, officers, agents and employees as follows:

- 13.01 **Third Party Litigation.** The Association shall indemnify any Director or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceedings, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was such Director or officer or an employee or agent of the Association, or is or was serving at the request of the Association as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if did not act in a grossly negligent manner and acted in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in itself, create a presumption that the person did not act in good faith, and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association,

and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

- 13.02 **Association Litigation.** The Association shall indemnify any Director or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was such a Director or officer or an employee or agent of the Association, or is or was serving at the request of the Association as Director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he did not act in a grossly negligent manner and acted in a manner he reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or gross misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought, or any other court having jurisdiction in the premises, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which such court shall deem proper.
- 13.03 **Expenses.** To the extent that a Director or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 13.01 or 13.02 of this Article XIII, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by him in connection therewith, without the necessity for the determination as to the standard of conduct as provided in Section 13.04 of this Article XIII.
- 13.04 **Determination of Right to Indemnity.** Any indemnification under Section 13.01 or 13.02 of this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 13.01 or 13.02 of this Article. Such determination shall be made (i) by the Board of Directors of the Association by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable, and such a quorum of disinterested Directors so directs, by independent legal counsel (who may be regular counsel for the Association) in a written opinion; and any determination so made shall be conclusive.
- 13.05 **Advance of Expenses.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized in the particular case, upon receipt of an undertaking by or on behalf of the Director or officer to repay such amount unless it

shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article XIII.

- 13.06 **Other Indemnification Rights.** Agents and employees of the Association who are not Directors or officers of the Association may be indemnified under the same standards and procedures set forth above, in the discretion of the Board of Directors of the Association.
- 13.07 **Benefitted Parties.** Any indemnification pursuant to this Article XIII shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

ARTICLE XIV

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

- 14.01 **Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Association, Lot Owners, all persons subject to this Restated Declaration, and any Person not otherwise subject to this Restated Declaration who agree to submit to this Section (collectively the "Bound Parties"), agree to encourage the amicable resolution of disputes between the Bound Parties or involving enforcement of the provisions of this Restated Declaration, the Bylaws and any Rules and Regulations adopted by the Association, and to avoid the emotional and financial cost of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party, including without limitation, claims, grievances or disputes ("Claims") arising out of or relating to the violation, interpretation, application or enforcement of this Restated Declaration, the Bylaws, the Association rules, or the Articles of Incorporation, except those Claims exempted in Section 14.02, shall be subject to the procedures set forth in this Article XIV.
- 14.02 **Limitations.** The limitations in this Article XIV pertaining to exhausting administrative remedies shall not apply to the following Claims ("Exempt Claims"):
- (a) Any lien, claim, foreclosure, action or complaint wherein the Association or the Board alleges against a Lot Owner the nonpayment of common expenses, whether by special assessment or any other form of nonpayment of funds owed to the Association, or any other failure to comply with the provisions of Article VII herein; and
 - (b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief), damages, or such other ancillary relief as the Association may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of 6.03 (Alterations), 6.05 (Animals), Article 6.06 (Offensive Activity) and Article 6.07 (Nuisance); and

- (c) Any suit between Owners seeking redress on the basis of a claim which would constitute a course of action under the laws of the State of Utah in the absence of a claim based on this Restated Declaration, Bylaws, Articles or Rules of the Association, if the amount in controversy exceeds \$5,000.00; and
- (d) Any fines assessed by the Association.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 14.03, but there shall be no obligation to do so.

14.03 **Mandatory Procedures For All Other Claims.** Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”), other than a Claim exempted from this provision by Section 14.02, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

- (a) **Notice.** In the event that any Claimant shall have a grievance against any Respondent, said Claimant shall set forth said grievance or complaint in writing (the “Notice”) and shall deliver the same to the Respondent, stating plainly and concisely:
 - (i) the nature of the Claim, including date, time, location, Persons involved, Respondent’s role in the Claim and the provisions of this Restated Declaration, the Bylaws, the Rules, the Articles of Incorporation or other authority out of which the Claim arises; and
 - (ii) the basis of the Claim (i.e., the provisions of the Restated Declaration, Bylaws, Rules or Articles triggered by the Claim); and
 - (iii) what Claimant wants Respondent to do or not to do to resolve the Claim; and
 - (iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.
- (b) **Response.** Within ten (10) days of receiving the Notice from Claimant, the Respondent shall set forth a response in writing (the “Response”) and shall deliver the same to the Claimant, stating plainly and concisely:
 - (i) those facts and/or allegations contained in Claimant’s Notice with which Respondent agrees and disagrees, and a statement of the facts and allegations related to the grievance as understood and believed by Respondent; and

- (ii) those provisions of the Restated Declaration, the Bylaws, the Rules, the Articles of Incorporation or other authority out of which the Claim arises which Respondent understands applies to and controls the resolution of the Claim; and
 - (iii) what Respondent is willing to do or not do to resolve the Claim; and
 - (iv) that Respondent wishes to resolve the Claim by mutual agreement with Claimant and is willing to meet in person with Claimant at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.
- (c) **Negotiation.** Each Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any party, accompanied by a copy of the Notice, the Board (if not involved in the dispute as either a Claimant or Respondent) may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the parties and to the welfare of the community.
- (d) **Meeting.** In the event that the cause of said grievance or complaint is not rectified by the parties within twenty (20) days from the date of the receipt of Respondent's response, within ten (10) days from the date of expiration of said initial twenty (20) day period, a time and place mutually acceptable to the Claimant and the Respondent shall be established for a meeting between the Claimant and the Respondent.
- (e) **Resolution or Litigation.** At such meeting, the Claimant and Respondent shall be entitled, but not required, to be represented by counsel. The parties, and/or counsel for the Claimant and counsel for the Respondent shall attempt to reach an amicable solution to the grievance or complaint. In the event that the parties are not able to reach such a solution within thirty (30) days from the date of the meeting between the Claimant and the Respondent, the Claimant shall then be entitled to proceed to have the matter judicially determined. Any resolution by the parties shall be reduced to writing and signed by each party or the party's legal representative prior to the end of the thirty (30) day period referred to herein.
- (f) **Exhaustion of Remedies Required.** All grievances and complaints of Claimants shall follow the procedure outlined and set forth herein prior to the commencement of any litigation relative to said grievances and complaints. However, if a Respondent fails to provide the written response required within ten (10) days, or if either party refuses to meet in good faith within the time frames set forth herein to discuss resolution of the grievance or complaint, the non-offending party shall be released from the obligation to comply with this

Article XIV and may seek judicial relief without the need to wait for additional time periods to expire.

- 14.04 **Allocation of Costs of Resolving Claims.** Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 14.03, including the fees of its attorney or other representative.
- 14.05 **Enforcement of Resolution.** If the parties agree to resolve any Claim through negotiation in accordance with Section 14.03 and any party thereafter fails to abide by the terms of such agreement, then any other party may file suit to enforce such agreement without the need to again comply with the procedures set forth in Section 14.03. In such event, the party taking action to enforce the agreement shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement, including without limitation attorney fees and court costs.

ARTICLE XV

ASSESSMENT OF FINES

It is the intent of Barton Woods Board to assess a fine against those Lot Owners or residents who fail to abide by the Barton Woods Community Rules. The Board hereby enacts these provisions as authorized by the Utah Community Association Act, U.C.A. § 57-8a-208.

- 15.01 **Authorization.** The Board is authorized to assess a fine against Lot Owners who violate provisions in this Restated Declaration, the Bylaws, or the Association rules and regulations. The assessment of a fine shall be in accordance with the provisions of Utah Code Annotated, §57-8a-208, the provisions of this Restated Declaration, and the rules and regulations adopted by the Board.
- 15.02 **Written Notice of Violation.** Before assessing a fine, the Board must give a written notice of the violation to the Lot Owner of the violation and inform the Lot Owner that a fine will be imposed if the violation is not cured within the time provided in the written notice.
- (a) The written notice shall contain a description or brief summary of the provision, bylaw, rule or regulation that has been violated and a description of the manner in which the bylaw, rule or regulation has been violated.
- (b) If a violation is temporarily cured or stopped, but is repeated by the same Lot Owner within 120 days of the date a written notice of violation is first served on the Lot Owner, the Board shall not be required to serve another notice of violation upon the Lot Owner but may rely upon the notice provided in the first written notice.

- 15.03 **Time to Cure.** In all instances, the violation must be cured within 48 hours of the written notice being delivered to the Lot Owner or the Lot Owner's agent, unless such time period is extended by the Board for good cause. The member of the Board or their agent that serves the written Notice of Violation on the Lot Owner shall write on the Notice of Violation the date and time the Notice of Violation was served on the Lot Owner and the date and time by which the violation must be cured. If a Lot Owner repeats the violation more than 48 hours after receiving the written Notice of Violation but less than 120 days after receiving the notice, the Lot Owner shall be deemed to have not timely cured the violation.
- 15.04 **Fine.** If the violation is fully and completely cured within the time provided in the written Notice of Violation, and is not repeated within 120 days of the time the written notice is first served on the Lot Owner, no fine may be assessed by the Board. If the violation is not fully cured within the time provided, the Board shall, after confirming that the violation complained of has not been fully cured, impose a fine as provided in the Bylaws, or the rules and regulations. If the same violation is repeated more than 48 hours but less than 120 days after the written Notice of Violation is first given, the Board shall impose a fine as provided in the Bylaws, or the rules and regulations. The Lot Owner shall receive a written Notice of Fine from the Board informing the Lot Owner of the amount of the fine imposed.
- 15.05 **Manner of Providing Notice of Violation and Fine.** The notice of a violation of a bylaw or the rules and regulations of the Association and the notice of a fine imposed by the Board may be provided to the Lot Owner in any one or more of the following ways:
- (a) Delivering a copy to the Lot Owner personally; or
 - (b) Sending a copy through U.S. mail, addressed to the Lot Owner at his or her place of residence, in which case an additional 48 hours shall be allowed to cure the violation; or
 - (c) Leaving a copy with a person of suitable age and discretion at the Lot Owners Home; or
 - (d) Affixing a copy in a conspicuous place on the Lot; or
 - (e) If the person committing the violation is a tenant or guest of the Lot Owner, by:
 - (i) personally delivering a copy to the tenant living in the Lot or affixing a copy in a conspicuous place on the Lot, and by
 - (ii) mailing a copy to the Lot Owner at the address provided by the Lot Owner to the Association.

- 15.06 **Non Owner Occupied Lots.** If cases where the Lot is not occupied by a Lot Owner and the violation of the bylaw or rules and regulations is committed by a resident or tenant of the Home, the Lot Owner shall be responsible for the failure of the resident or tenant to cure the violation of the Bylaws or rules and regulations and the Lot Owner shall be subject to the fine imposed as the result of the violation. For purposes of the lease between the Lot Owner and the resident of the Home, the provisions of these amended community rules shall be incorporated by reference into the terms of the lease and the Lot Owner may collect from the resident of his or her Lot any fines the Lot Owner becomes obligated to pay by virtue of the resident's actions. The Lot Owner shall be responsible for bringing a separate action to collect any such fines from the Lot Owner's tenant.
- 15.07 **Board Action.** Any action by the Board involving a Notice of Violation or a Notice of Fine may be taken by any officer or member of the Board if so authorized or ratified by a quorum of the Board. A quorum shall consist of 50% or more of the Board present at a meeting either in person or by telephone conference, or if not present at a meeting, members consenting to the action after conferring with other members of the Board.
- 15.08 **Violations For Which a Fine May Be Assessed.** A fine may be assessed for the violation of a provision in the Restated Declaration, the Bylaws, or the rules or regulations, or for a rule listed on Exhibit "E", which is attached and incorporated by this reference. The list of violations of Bylaws, rules or regulations listed on Exhibit "E" may be modified by the Board pursuant to their power to enact rules governing conduct within a Project as contained in the Community Association Act, Utah Code Ann. 57-8a-101 et al. Only those violations listed on Exhibit "E" as well as those violations of rules adopted by the Board hereafter are the offenses which are subject to a fine. Exhibit "E" is a list and a summary of the rules and may be used to incorporate provisions in the Restated Declaration, Bylaws, or rules and regulations for which a fine may be assessed.
- 15.09 **Continuous Violations.** Each day (24-hour period) during which a violation of the Restated Declaration, the Bylaws or the rules and regulations of the Association, or the rules listed on Exhibit "E", continues, after the time period expires during which the Lot Owner is required to cure the violation, constitutes a separate violation and is subject to a fine in the amount listed in Exhibit "E". The violation of a provision in the Restated Declaration, the Bylaws, a rule or regulation, or of a rule listed on Exhibit "E", which is temporarily cured within the time period required in the Notice of Violation, but which is violated again within 120 days of the date the original Notice of Violation was served, is deemed to be a continuous violation for which another Notice of Violation is not required to be served.
- 15.10 **Amount of Fines.** The amount of a fine for a violation of a provision in the Restated Declaration, the Bylaws, the rules and regulations, or the rules listed on Exhibit "E", shall be in the amount listed on Exhibit "E", but in no case shall a fine exceed \$500.00. A cumulative fine, which is a fine for a violation that is not timely cured or a fine that

is repeatedly assessed due to repeated violations for which a Notice of Violation has previously been served, may not exceed \$500.00 per month.

- 15.11 **Late Fees.** Fines not paid within 10 days of the first of each month shall be assessed a late fee of \$25.00. If the late fee has not been received by the first of the following month an additional fee of \$25.00 shall be added and an additional late fee of \$25.00 shall be assessed each month thereafter until paid. Late fees shall be waived only by a vote of the Board of Directors.
- 15.12 **Protesting the Fine.** A Lot Owner who is assessed a fine may request an informal hearing with the Board to protest or dispute the fine within 30 days from the date the fine is assessed (which is the date written on the notice of fine). The Lot Owner protesting the fine shall request the informal hearing by delivering a written request to any member of the Board stating the grounds for the protest or dispute and setting forth in detail the following:
- (a) the grounds for the protest, including any unusual circumstances justifying a reduction in the standard fine;
 - (b) the facts relied upon by the protesting Lot Owner with respect to the violation or non-violation of the Bylaws, rules or regulations;
 - (c) the amount of the fine the Lot Owner claims should be paid and the reasons supporting that claim; and
 - (d) any errors made by the Board in calculating, assessing, or collecting the fine.
- 15.13 **Informal Hearing.** Within 21 days of receiving the written request for hearing, the Board shall schedule an informal hearing at which time the requesting Lot Owner will be given an opportunity to present evidence and witnesses supporting the Lot Owner's position. At least 50% of the Board shall be present at the hearing. No formal rules of evidence will be required, and the Board may receive the evidence submitted by the requesting Lot Owner and determine the probative value of such evidence. If it chooses and if it would be of benefit to the requesting Lot Owner, the Board may also produce evidence supporting its decision to fine the Lot Owner. However, the intent of the hearing is to listen to the Lot Owner's explanations and to receive information from the Lot Owner, and not to have a trial. The Board may terminate the hearing at any time if any individual present becomes unruly, inconsiderate or rude.
- 15.14 **Decision of the Board.** The Board, after the requesting Lot Owner has had the opportunity at the hearing to present the evidence and information desired, may either:
- (a) leave the amount of the fine as originally assessed;
 - (b) reduce the fine to an amount agreed upon by a majority of the Board present at the hearing;

- (c) reduce the fine to an amount agreed to by the offending Lot Owner with the agreement that the offending Lot Owner will pay the fine within 10 days and not appeal the fine in district court;
- (d) suspend all or a portion of the fine conditioned on the Lot Owner not repeating the violation for 180 days; or
- (e) forgive the fine for good cause shown.

The Board shall render a written decision no later than ten (10) days after the date of the hearing.

15.15 **Appeals.** A Lot Owner may appeal a fine by initiating a civil action in district court within 180 days after:

- (a) a hearing has been held and a final decision has been rendered by the Board, or
- (b) the time to request an informal hearing has expired without the Lot Owner making such a request.

15.16 **Lien.** A fine assessed against a Lot Owner which remains unpaid after the time for appeal has expired becomes a lien against the Lot Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under U.C.A. § 57-8a-301.

15.17 **Promulgation of Additional Rules and Fines.** The Board is authorized to adopt and to amend the administrative or community rules and regulations as may be necessary or desirable to insure the Association is maintained and used in a manner consistent with the interest of Lot Owners, to protect and enhance the quality of life in the complex, to protect the property values of the Lots, to ensure a quality and enjoyable lifestyle, and to respect the rights and privileges of all residents to be free from the annoyance, disturbance and nuisance of others. The method by which the Board may adopt new Association rules shall be as follows;

- (a) New rules shall be adopted at a regular or special meeting of the Board. The rule shall be in writing and voted on and approved by a majority of the members of the Board. If the violation of the new rule shall have a fine associated with it, the amount of the fine shall be stated in the rule.
- (b) Prior to the new rule becoming enforceable, the Board shall cause to be delivered, personally or by regular U.S. mail, a copy of the new rule to each Lot Owner. If a Lot Owner is not living in his Home, the Board shall cause to be mailed to the Lot Owner's last known address and to be posted on the door of the Lot Owner, a copy of the new rule. The new rule shall become enforceable five

(5) days from the day it is mailed to each Lot Owner or posted on the door of an absentee Lot Owner.

- (c) Rules adopted in this manner shall deal only with the health, safety or welfare of Association residents or Association property. Rules adopted by the Board may also be used to clarify provisions in the Restated Declaration, Bylaws, or Association rules and regulations, or to change the amount of a fine associated with the violation of the rule.
- (d) Rules adopted by the Board shall have the same force and effect as rules contained in the Restated Declaration, the Bylaws, or other administrative rules and regulations adopted by the Association, including the power to collect fines from those who violate these rules.

ARTICLE XVI

NO COMMERCIAL BUSINESS

16.01 **No Businesses.** Inasmuch as Barton Woods is a residential community where neighbors live in close proximity to each other, no business of any kind whatsoever shall be established, conducted, permitted, operated, or maintained at or within Barton Woods unless it complies with all federal, state and municipal laws, ordinances and licensing requirements, as well as complying with the Barton Woods Declaration, Bylaws, rules and regulations. The following general requirements for Home occupation businesses in Barton Woods must be met:

- (a) **Limited Activity.** Customers, patrons, guests, clients or individuals may come to Homes for very limited business activity and no more than one person at a time;
- (b) **No Pickup or Delivery.** No items or products may be sold or picked up by customers at the Home or delivered from the Home directly to customer; and deliveries by UPS or FedEx type carriers shall not be more than twice daily;
- (c) **Home Business.** Only services that are done largely on the telephone and computer, such as consulting, tax preparation, computer or Internet businesses, may be provided at the Home, and only as permitted by city ordinance;
- (d) **Vehicles.** Any vehicles used in the business must comply with the Association parking rules.
- (e) **Hours.** No customers shall come to or deliveries be made to a Home between the hours of 8:00 p.m. and 8:00 a.m.

ARTICLE XVII

MISCELLANEOUS PROVISIONS

- 17.01 **Lighting Policy.** Every improved Lot within the Project shall have dusk-to-dawn lighting, with front entry and garage illuminated. Members must have outside light sensors or timers to satisfy the requirement of this rule. Noncompliance with this rule shall be a Default, subject to the provisions of Article XV of this Restated Declaration.
- 17.02 **Mutual Termination Agreement.** The Association entered into a Mutual Termination Agreement with the Lakeview Terrace Unit Owners Association, a copy of which is attached hereto as Exhibit "F". Barton Woods hereby incorporates the Mutual Termination Agreement as part of this Restated Declaration and acknowledges it to be an accurate representation of the agreement between the Association and Lakeview Terrace Unit Owners Association, and is an agreement which each association has complied with since the time it was adopted and entered into.
- 17.03 **Interpretation.** The provisions of this Restated Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a planned Lot development. Failure to enforce any provision hereof shall not constitute a waiver of the rights to enforce said provision or any other provision hereof.
- 17.04 **Severability.** If any phrase contained in this Restated Declaration or provision of this Restated Declaration, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Restated Declaration, or the phrase or paragraph in which it is contained, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.
- 17.05 **Governing Law and Jurisdiction.** Interpretation and enforcement of this Restated Declaration shall be according to the laws of Utah. Jurisdiction and venue of any dispute hereunder shall be in Davis County, Utah, or in the United States District Court for Utah.
- 17.06 **Default.** If any party governed by the terms of this Restated Declaration defaults under any provision hereof, that defaulting party shall pay all costs and attorney fees incurred by any other party to enforce the provisions hereof, whether incurred through formal lawsuit or otherwise.
- 17.07 **Paragraph Numbers and Headings.** Headings and paragraph numbers have been inserted herein solely for convenience and reference and shall not be construed to affect the meanings, construction or effect hereof.
- 17.08 **Effective Date.** This Restated Declaration shall take effect upon recording.

CERTIFICATION

It is hereby certified that more than two-thirds (2/3) of the Lot Owners within Barton Woods Homeowners Association have voted to approve this Restated Declaration.

BARTON WOODS HOMEOWNERS ASSOCIATION, INC.

By: Clifford C. Michaelis
Its: President

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On October 25, 2012, personally appeared before me Cliff Michaelis, who being duly sworn, did say that he/she is the President of the Barton Woods Homeowners Association, Inc., and that the within and foregoing instrument was signed in behalf of said Association by authority of its governing documents and of its members.



Ligia E Parker
NOTARY PUBLIC

EXHIBIT "A"

Legal Description of Property Subject to this Restated Declaration

All of Barton Woods PUD, Plat A, Davis County, Utah

All of Barton Woods PUD, Plat B, Davis County, Utah

All of Barton Woods PUD, Plat C, Davis County, Utah

All of Barton Woods PUD, Plat D, Davis County, Utah

All of Barton Woods PUD, Plat E, Davis County, Utah

EXHIBIT "B"

**Bylaws
of
Barton Woods Homeowners
Association, Inc.**

BYLAWS

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BYLAWS
OF
BARTON WOODS HOMEOWNERS
ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

- 1.01 The name of the corporation is Barton Woods Homeowners Association, Inc., hereinafter referred to as the "Association". The principal office of the Corporation shall be located in Bountiful, Utah, but meetings of members and Directors may be held at such places within the state of Utah as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

- 2.01 "**Common Areas and Facilities**" shall mean all real property owned and set aside within the project for the common use and enjoyment of the Owners.
- 2.02 "**Corporation**" shall mean and refer to Barton Woods Homeowners Association, Inc., its successors and assigns.
- 2.03 "**Restated Declaration**" shall mean and refer to the Restated and Amended Declaration of Covenants, Conditions and Restrictions of Barton Woods PUD applicable to the properties within the Project and recorded in the Office of the Davis County Recorder, State of Utah.
- 2.04 "**Lot**" shall mean and refer to any planned unit development lot.
- 2.05 "**Member**" shall mean and refer to each of those persons entitled to membership in the Corporation as provided in the Restated Declaration.
- 2.06 "**Owner**" shall mean and refer to the record-owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the Project, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 2.07 "**Project**" shall mean and refer to the planned unit development project constructed on that certain real property described in the Restated and Amended Declaration of Covenants, Conditions and Restrictions of Barton Woods PUD, recorded in the office of the Davis County Recorder, and such additional properties as may hereafter be brought within the jurisdiction of the Corporation.

- 2.08 All other references used, but not otherwise defined herein, shall have the meanings defined in the Restated Declaration.

ARTICLE III

MEETINGS OF THE MEMBERS OF THE CORPORATION

- 3.01 **Annual Meetings.** An annual meeting of lot owners shall be held at the Project or at such place designated by the Board on the first Monday in October, or at such other time as may be designated by written notice of the Board of Directors, or their designate, delivered to the owners not less than ten (10) days prior to the date fixed for said meeting. At the annual meeting, elections shall be held to elect members of the Board of Directors, financial reports shall be given and such other business conducted as may be properly presented. The Board may schedule a semiannual meeting six (6) months after the annual meeting.
- 3.02 **Special Meeting of the Lot Owners.** Special meetings of the lot owners may be called at any time by written notice signed by a majority of the Board of Directors, or by the owners having one-half (½) of the total votes, delivered not less than fifteen (15) days prior to the date fixed for said meeting. Such meeting shall be held on the Project or at such place designated by the Board, and the notice thereof shall state the date, time and matters to be considered.
- 3.03 **Quorum.** A quorum for the transaction of business at an Owner' s meeting shall consist of a majority of all the undivided ownership interests in Common Areas and Facilities of the Project. If a quorum is not present at an Owner's meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours, and no later than thirty (30) days, after the time set for the original meeting. No notice of such rescheduled meeting shall be required. A quorum for the transaction of business at the rescheduled meeting shall be twenty-five percent (25%) of all the undivided ownership interests in Common Areas and Facilities in the Project.
- 3.04 **Voting at Meeting of Lot Owners.** At any meeting of owners, each owner shall be entitled to one vote for the Owner's ownership interest in each lot. Any owner may attend and vote at such meeting in person or by agent duly appointed in writing signed by the owner and filed with the Board of Directors. Where there is more than one record owner for any lot, any or all such owners may attend any meeting of the owners, but they must act unanimously in order to cast the vote to which they are entitled. The Board of Directors may accept the vote cast by any one of the record owners of a lot, unless such vote is objected to by any of the other record owners of such lot, and any disagreement between such record owners shall be resolved among themselves; provided, however, that if the record owners are unable to resolve the disagreements among themselves and act unanimously, the Board of Directors shall not accept the vote of such owners.

- 3.05 **Notification by personal delivery, mail, website and e-mail.** Any notice permitted or required to be delivered by the Board or from the Association to the Owners may be delivered either personally, by U.S. mail, or by electronic means.
- (a) If notice is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Homeowner at the address given by such person to the Board of Directors for the purpose of service of such notice or to the Lot of such person if no address has been given. Such addresses may be changed by Homeowners from time to time by notice in writing to the Board of Directors.
 - (b) If notice is by electronic means, any notice delivered by the Association to Owners under the provisions of the Restated Declaration or these Bylaws may be sent by electronic means, including text message, email, or the Association's website. The Association shall maintain records of all notices sent to Members by electronic means, including the electronic address to which notice was sent. When a notice is sent electronically, the Association shall first compile a list of Owners' current electronic addresses (such as email or text messaging addresses or other types of wellknown electronic forms, such as Facebook) and the Association shall send notification of all Association meetings and business to the electronic address of the Owners. The Association secretary shall thereafter send an electronic notice, via email or a comparable electronic means, of all Association meetings and business to those Owners who do not object to electronic notification in this manner. A member may, by written demand, require the Association to provide notice to the lot owner by mail.
 - (c) If notice is by personal means, notice may be delivered to Owners by hand delivery directly to the Owner or a responsible occupant of an Owner's Home, or by securely attaching a copy of the notice to the front entry door of the Owner's Home.
 - (d) **Proxies.** At all meetings of members, each member may vote either in person or by proxy. All proxies shall be in writing duly signed and dated by the voting member and filed with the Secretary of the Corporation. Every proxy shall be revocable either in writing or personal appearance and shall be automatically void upon conveyance by the member of his lot.

ARTICLE IV

SELECTION AND TERM OF THE BOARD OF DIRECTORS

- 4.01 **Number.** The affairs of this Corporation shall be managed by a Board of seven (7) Directors who need not be members of the Corporation.
- 4.02 **Term of Office.** At each annual meeting the members shall elect two (2) or three (3) Directors for a term of three (3) years.
- 4.03 **Removal.** Any director may be removed from the Board, with or without cause, by a majority vote of the voting members of the Corporation. Upon the death, resignation or removal of a Director, a successor Director shall be selected by the remaining members of the Board and shall serve for the unexpired term of the predecessor.
- 4.04 **Compensation.** No Director shall receive compensation for any service that Director may render to the Corporation. Any Director, however, may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.
- 4.05 **Action Taken Without a Meeting.** The Board of Directors shall have the authority to take any action in the absence of a meeting which the Directors could take at a meeting by obtaining the written waiver and approval of all Directors. Any action so approved shall have the same force and effect as though taken at a meeting of the Directors.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

- 5.01 **Nomination.** Nomination for election to the Board of Directors shall be made either (a) by a Nominating Committee, or (b) from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and one (1) or more voting members of the Corporation. The Nominating Committee shall be specified and appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for elections to the Board of Director as it shall, in its discretion, deem proper.
- 5.02 **Elections.** Elections to the Board of Directors shall be by secret written ballot, unless all of the members present elect otherwise. At such elections the voting members or proper proxies may cast in respect to each vacancy as many votes as they are entitled to exercise under the provisions of the Restated Declaration. The persons receiving the largest number of votes shall be elected.

ARTICLE VI

MEETING OF BOARD OF DIRECTORS

- 6.01 **Regular Meetings.** Regular meetings of the Board of Director may be held monthly, or at least once every three (3) months, upon at least 48-hour notice, at such place and hour as may be fixed, from time to time, by resolution of the Board.
- 6.02 **Special Meetings.** Special meetings of the Board of Directors shall be held when called by (a) the President of the Corporation, or (b) by any two (2) Directors, after not less than two (2) days notice to each Director.
- 6.03 **Quorum.** A majority of the Directors shall constitute a quorum for the transaction of business. Every act or decision authorized by a majority of the Directors present at a duly called and constituted meeting shall represent the act or decision of the entire Board of Directors.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

- 7.01 **Powers.** The Board of Directors shall have the power to:
- (a) adopt and publish rules and regulations governing the use of the Common Areas and Facilities by the members and their guests, and to establish penalties for any infraction thereof; and
 - (b) to suspend the voting rights and right to use the Common Areas and Facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Corporation. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days from infraction of published rules and regulations; and
 - (c) to exercise on behalf of the Corporation all powers, duties and authority vested in or delegated to the Corporation and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Restated Declaration; and
 - (d) to declare the office of a member of the Board of Directors to be vacant if such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
 - (e) to employ a manager, an independent contractor, and employees as they deem necessary, and to prescribe their duties.

7.02 **Duties.** It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and the affairs of the Corporation and to present a statement thereof to the members at the annual meeting of the Corporation; and to present such statement at any special meeting upon written request given at least ten (10) days prior to such meeting by one-fourth (1/4) of the members entitled to vote; and
- (b) to supervise all officers, managers, agents and employees of the Corporation, and to assure that their duties are properly performed; and
- (c) as more fully provided in the Restated Declaration, to:
 - (i) fix the amount of the assessment against each lot at least thirty (30) days in advance of each annual assessment period; and
 - (ii) to send written notice of any assessment to every owner subject thereto at least thirty (30) days in advance of the annual assessment; and
 - (iii) within its discretion the Board of Directors may foreclose any lien against any property for which assessments are not paid or bring an action at law against the owner personally, as authorized by the Restated Declaration; and
- (d) to issue, or to cause to be issued, upon demand by any voting member, a written statement setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of any statement. If a signed statement verifies that an assessment has been paid, such statement shall be conclusive evidence of payment; and
- (e) to acquire and maintain adequate liability and hazard insurance on the Common Areas and Facilities owned by the Corporation; and
- (f) to require all officers, managers and employees having fiscal responsibilities to be bonded as the Board may deem appropriate; and
- (g) to cause the Common Areas and Facilities to be maintained; and
- (h) to take all other actions directed or permitted in the Restated Declaration.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

- 8.01 **Enumeration of Offices.** The officers of the Corporation shall be a President, a Secretary, and a Treasurer, and such other officers as the Board of Directors may, from time to time, create by resolution.
- 8.02 **Election of Officers.** The election of the officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.
- 8.03 **Term.** The officers of the Corporation shall be elected annually by the Board and each shall hold office of one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.
- 8.04 **Special Appointments.** The Board may elect such other officers as the affairs of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine necessary.
- 8.05 **Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time upon giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified herein, and unless otherwise specified to make it effective.
- 8.06 **Vacancies.** A vacancy in any office may be filled by appointment from the Board of Directors. The officer appointed to such vacancy shall have all of the powers of the appointed office and shall serve for the remainder of the term of the officer replaced.
- 8.07 **Multiple Offices.** The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.
- 8.08 **Duties.** The duties of the officers are as follows:

PRESIDENT

- (a) The President shall preside at all meetings of the Board of Directors and members and shall assure that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.
- (b) The President shall appoint, remove and fix the compensation of all managers, agents and employees of the Corporation subject to approval by the Board of Directors.

- (c) The President shall enforce these Bylaws and perform all of the duties and obligations required or established by law as incident to the office of President.

SECRETARY

- (a) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; keep the seal, if any, of the Corporation and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Corporation together with their addresses; and shall perform such other duties as required by the President. The Secretary shall receive and attend to all correspondence and perform all duties and obligations incident to the office of Secretary.

TREASURER

- (a) The treasurer shall be the principal financial officer of the corporation and have the care and custody of all its funds, securities, evidences of indebtedness and other personal property and deposit the same in accordance with the instructions of the Board of Directors.
- (b) The treasurer shall receive and give receipts and acquittance for moneys paid in on account of the corporation, and pay out of the funds on hand all bills, payrolls and other just debts of the corporation of whatever nature upon maturity.
- (c) Unless there is a controller, the treasurer shall be the principal accounting officer of the corporation and as such prescribe and maintain the methods and systems of accounting to be followed, keep complete books and records of account, prepare and file all required local, state and federal tax returns, prescribe and maintain an adequate system of internal audit, and prepare and furnish to the president and the Board of Directors statements of account showing the financial position of the corporation and the results of its operations.
- (d) The treasurer shall, upon request of the Board, make such reports to it as may be required at any time and perform all other duties as from time to time may be assigned to him by the Board of Directors or the president.

COMMITTEES

- (a) The Corporation may appoint a Management Committee as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out the requirements and purposes of the Corporation.

ARTICLE IX

BOOKS AND RECORDS

- 9.01 **Inspection of.** The books, records and papers of the Corporation shall, during reasonable business hours, be subject to inspection by voting members. The Restated Declaration, Articles of Incorporation and these Bylaws shall be available for inspection by any member at the principal office of the Corporation, where copies may be purchased at reasonable cost.
- 9.02 **Record Retention Policy.** The attached Exhibit "B-1" shall serve as the record retention schedule for the Association. It shall serve as a guideline and is not an exclusive list. Some of the records below may not currently exist, but are listed in the event they exist in the future. The Board shall use its best judgment in determining the retention period for any record not mentioned below. The records described below shall be kept for as long as indicated. Once their retention period has expired, the Board may destroy the documents.

ARTICLE X

AMENDMENTS

- 10.01 **Amendment of Bylaws.** These Bylaws may be amended, at a regular or special meeting of the voting members upon the vote of a majority of a quorum of members present in person or by proxy.
- 10.02 **Conflict in Documents.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Restated Declaration and these Bylaws, the Restated Declaration shall control.

ARTICLE XI

MISCELLANEOUS

- 11.01 **Governing Law.** These Bylaws shall be interpreted according to the laws of the State of Utah.
- 11.02 **Fiscal Year.** The fiscal year of the Corporation shall begin on the first day of January and end on the 31st day of December every year.

[Signatures on following page]

CERTIFICATION

It is hereby certified that more than two-thirds (2/3) of the Lot Owners within Barton Woods Homeowners Association have voted to approve these Bylaws as part of the vote to approve the Restated Declaration to which these Bylaws are attached.

BARTON WOODS HOMEOWNERS ASSOCIATION, INC.

By: Cliff C. Michaelis
Its: President

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On October 25, 2012, personally appeared before me Cliff Michaelis, who being duly sworn, did say that he is the President of the Barton Woods Homeowners Association, Inc., and that the within and foregoing instrument was signed in behalf of said Association by authority of its governing documents and of its members.



Ligia E Parker
NOTARY PUBLIC

EXHIBIT "B-1"

Record Retention Schedule

Description of Record	Retention Period
Articles of Incorporation	Permanent
Declaration of Covenants, Conditions, and Restrictions (and amendments)	Permanent
Corporate or Association Bylaws	Permanent
Deeds, Plats, Maps	Permanent
Resolutions adopted by the board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members (U.C.A §16-6a-1601 (5)(c))	Permanent
Minutes of all meetings board of directors	Permanent
Minutes of all annual and special meetings of members	Permanent
Record of all actions taken by the members or board of directors without a meeting	Permanent
A record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the nonprofit corporations	Permanent
Record of all waivers of notices of meetings of members and of the board of directors or any committee of the board of directors	Permanent
Architectural Modifications- Approved and Disapproved	Permanent
Architectural Guidelines (current and past)	Permanent
Association or Community Rules	Current and Past 6 Years
Ownership/Membership Records	Current and Past 6 Years
All written communications to members generally as members	6 years
A list of the names and address of current directors and officers	Current and past 4 Years
A copy of the most recent annual report delivered to the division under Section (U.C.A §16-6a-1607)	Current and Past 4 Years
Financial records and statements, including invoices, tax returns, checks, etc	4 years

EXHIBIT "C"

MAINTENANCE CHART

The following chart shows the division of responsibility for maintenance, replacement and repair of Common Area and Lots between the Homeowners Association and the Lot Owners.

	EXTERIOR	HOA	OWNER
1	Maintain, repair, replace: roof and siding		X
2	Maintain, repair, replace: exterior brickwork and chimneys		X
3	Maintain, repair, replace: front steps and sidewalk		x
4	Maintain, repair, replace: concrete foundations and entrees		x
5	Maintain, repair, replace: patio and deck floor support structures		x
6	Maintain, repair, replace: patio covers		x
7	Maintain, repair, replace: original fences		x
8	Maintain, repair, and replace: rain gutters and down spouts.		x
9	Painting and repair of patios, decks & balconies		x
10	Maintain, repair, replace, paint: exterior doors, including hinges, frames, thresholds, locks, doorbells and chimes		x
11	Maintain, repair, replace: garage floors and doors		x
12	Maintain, repair, replace: windows, sliding glass doors, screens and frames		x
13	Maintain, repair, replace: all lights attached to the exterior walls		x
14	Maintain, repair, replace: gas and electricity connections		x
15	Maintain, repair, replace culinary water system serving the interior of the residence		x
16	Maintain, repair, replace: outside water spigots and bibs		x
17	Maintain, repair, and replace: phone lines, TV cables, air conditioning, heat pumps.		x
18	Maintain, repair, replace Lot Owner improvements: skylights, solar panels, windows, awnings, attic vents and similar items		x
19	Maintain, repair and replace BBQ grills on patio, including gas lines		x

	INTERIOR	HOA	OWNER
20	All interior painting, decorations and furnishings from the inside of the unfinished walls and ceilings. This includes all appliances such as dishwashers, garbage disposals, ranges, refrigerators, furnaces, exhaust fans, attic vents, air conditioners, water heaters, and intercom, telephone, and computer networks.		X
21	Maintenance, cleaning and repair of venting, chimneys and fireplaces.		X
22	Maintain, repair, replace: electrical system to the city electric meter.		X
23	Maintain, repair, replace: electrical system from the electric meter to all outlets including switches and light fixtures.		X
24	Maintain, repair, replace: plumbing fixtures such as sinks, basins, toilets and all interior pipes and valves serving only that Home.		X
25	Repair of cracks or other damage to interior walls, floors or ceilings caused by normal Lot settling		X
26	Repairs of damage resulting from static water or seepage of water from any underground source (except water and sprinkler system failures).		X
27	Repairs of damage resulting from surface water		X
28	Repairs of damage to interior of a Lot resulting from static water, rain, or seepage of ground water		X
29	Repairs of damage to interior of a Lot resulting from sprinkler system failures		X
	GROUNDS	HOA	OWNER
30	Maintain lawn, flowers, trees and shrubs in the common areas.	X	
31	Replace lawn, flowers, trees and shrubs on individual Lots.		X
32	Replace sprinkler system on individual Lots.		X
33	For future use		
34	Snow removal: (driveways, front porch & steps, sidewalks to front door)		X
35	Snow removal. (Roadways, parking areas)	X	
36	Maintain, repair and replace roadways, parking Lots, curbs and gutters.	X	
37	Mow and fertilize lawn	X	
38	Spray trees and shrubs for bugs	X	
	OTHER	HOA	OWNER
39	Garbage collection.		X
40	Maintain, repair, replace: water system from the city water meter to the entrance to the exterior wall of each residence.		X

EXHIBIT "D"

As set forth in the original Plat Map for Barton Woods, there are 60 Lots in the Association. For assessment and voting purposes, the Association has permitted a number of Lots to be combined (see Article VIII, Section 8.07) thereby reducing the total number of Lots within Barton Woods from 60 Lots to 56 Lots. However, Davis County records and the plat maps for Barton Woods will continue to reflect the existence of 60 Lots.

Each of the 56 Lots recognized by the Association, regardless of the nature of the improvements thereon, shall be entitled to ownership of one-fifty-sixth (1/56th) undivided interest in the common areas and facilities of the Project, and each of the 56 Lots shall be responsible for and subject to one-fifty-sixth (1/56th) of the total assessments by the Association for the Project. The percentage Ownership of Common Area, including voting, attached to each Lot is shown below:

<u>Lot Number</u>	<u>%</u>	<u>Lot Number</u>	<u>%</u>
101	1.78%	310	1.78%
102	1.78%	311	1.78%
103	1.78%	312	1.78%
104	1.78%	401	1.78%
105	1.78%	402	1.78%
107	1.78%	403	1.78%
108	1.78%	404	1.78%
109	1.78%	405	1.78%
110	1.78%	406	1.78%
111	1.78%	407	1.78%
112	1.78%	410	1.78%
113	1.78%	411	1.78%
201	1.78%	412	1.78%
202	1.78%	413	1.78%
203	1.78%	414	1.78%
204	1.78%	415	1.78%
205	1.78%	501	1.78%
206	1.78%	502	1.78%
207	1.78%	503	1.78%
208	1.78%	504	1.78%
301	1.78%	505	1.78%
302	1.78%	506	1.78%
303	1.78%	507	1.78%
304	1.78%	509	1.78%
305	1.78%	510	1.78%
306	1.78%	511	1.78%
307	1.78%	512	1.78%
308	1.78%		
309	1.78%		
		Total = 56 Lots	100%

EXHIBIT "E"

AMOUNT OF FINE*

1ST Offense	2ND Offense within 90 days	3RD or more Offense within 90 days	<h1 style="margin: 0;">RULE</h1> <p style="margin: 0;">The activities listed below are prohibited</p>
\$50	\$75	\$100	<ul style="list-style-type: none"> · parking in areas marked with "no parking" signs · violation of any parking rule contained in the Restated Declaration, Bylaws, or rules · parking recreational vehicles or boats on the street of the HOA for more than 24 consecutive hours (RVs may only be parked in on the Street in connection with the loading or unloading of the RV, but for not more than 24 hours.) · parking more cars than can fit in the Owner's garage · parking unregistered or inoperable vehicles in the Association for more than 15 days
\$35	\$70	\$100	<ul style="list-style-type: none"> · driving faster than the permitted speed · driving faster than conditions safely permit
\$25	\$50	\$100	<ul style="list-style-type: none"> · performing maintenance or mechanical work on vehicles (including motorcycles & ATVs) outside of an Owner's garage
\$35	\$70	\$100	<ul style="list-style-type: none"> · leaving trash, garbage, or clutter on the Home's patio, doorstep, yard, or otherwise maintaining the patio, doorstep or yard in an unsightly, unclean, or unsanitary condition
\$50	\$100	\$150	<ul style="list-style-type: none"> · causing damage to the area maintained by the Association (lawn, secondary water lines, parking area)
\$10	\$20	\$30	<ul style="list-style-type: none"> · leaving personal belonging outside in the Owner's yard or common area for more than 24 hours (bicycles, scooters, toys, equipment)

\$25	\$50	\$125	<ul style="list-style-type: none"> · creating noise within a Home that can be heard in another Home, outside the Home, or in the common area such that the noise is (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life · creating noise in an Owner's yard or in the common area that can be heard in a Home such that the noise is (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life
\$25	\$50	\$100	<ul style="list-style-type: none"> · failing to clean up after pets that have defecated in the common area and / or failing to dispose of the feces in a sanitary manner · permitting dogs in the common area that are not on a leash · bringing a pet into a Home or Lot that can be heard or smelled in another Home such that the sound or smell created by the pet is (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life · dogs must be housebound or on a leash and accompanied by the Owner at all times. · failing to keep the pet reasonably quiet · no tethering pets on the patio unless in the presence of the pet Owner
\$25	\$50	\$100	<ul style="list-style-type: none"> · operating a business in a Home without a business license or in violation of the municipal ordinances, the Bylaws, Restated Declaration, or rules and regulations

*The cumulative fine for a continuing violation may not exceed \$500.00 per month.

EXHIBIT "F"

Mutual Termination Agreement

MUTUAL TERMINATION AGREEMENT

THIS MUTUAL TERMINATION AGREEMENT ("Termination Agreement") is made, effective as of the dates executed below, by and between Lakeview Terrace Unit Owners' Association ("LTUA"), a Utah non-profit corporation, and Barton Woods, Inc. ("BW"), a Utah non-profit corporation.

WHEREAS, LTUA and BW entered into a Common Area Sharing Agreement dated January 12, 1993 (the "Sharing Agreement"). A copy of the Sharing Agreement is attached hereto as Exhibit A and incorporated herein by reference;

WHEREAS, LTUA and BW entered into a Contract dated February 9, 1995 (the "Contract"), which superseded the Sharing Agreement and declared the provisions of the Sharing Agreement to be null and void. A copy of the Contract is attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, LTUA and BW desire to terminate the Contract, except as the Contract relates to the right to use the streets belonging to the Barton Woods Planned Unit Development property and the streets belonging to the Lakeview Terrace Phase I Condominium Project property;

NOW THEREFORE, in consideration of the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Termination Agreement agree as follows:

1. The parties hereby incorporate the above recitals into this Termination Agreement and warrant the above recitals to be true.
2. Simultaneous with this Termination Agreement, LTUA and BW shall convey to each other the easements attached hereto as Exhibits C and D, which each party shall record, at its own cost and expense, in the Davis County Recorder's Office.
3. It is the purpose and intent of this Termination Agreement, and the parties hereby agree and acknowledge that they understand that:
 - a. LTUA and BW mutually consent to the termination of the Contract, pursuant to paragraph 14(a) thereof. Paragraph 14(a) provides for termination of the Contract based upon the mutual written consent of both parties.
 - b. LTUA and BW, and their successors, assigns, officers, directors, employees, partners, agents, and affiliates, waive any and all rights arising out of the Contract.
 - c. LTUA and BW, and their successors, assigns, officers, directors, employees, partners, agents, and affiliates, unconditionally release and discharge each other

and their successors, assigns, officers, directors, employees, partners, agents, and affiliates, from any and all claims, demands, rights, and causes of action that they and such persons now have or may have in the future relating to the above-described Contract and Sharing Agreement, including but not limited to, (1) any obligation requiring LTUA to lease LTUA's clubhouse and related common amenities, such as the swimming pool and tennis court pursuant to the terms referenced in paragraph 8 of the Contract; (2) any terms of the Contract requiring BW to complete repairs, improvements, and renovations to LTUA's property, and (3) any money owed or alleged to be owed between the parties arising from the Contract.

d. In executing this Termination Agreement, it is understood and agreed that LTUA and BW rely wholly upon their own judgment, belief, and knowledge, and such advice as they may have received from their own counsel. Furthermore, LTUA and BW have not been influenced to any extent in entering into this Termination Agreement by any representation or statements made by the other party or their counsel. No provision of this Termination Agreement shall be interpreted for or against any party because that party or its counsel drafted such provision.

e. LTUA and BW expressly acknowledge that each has been represented by counsel of its own choice in connection with the preparation and execution of this Termination Agreement, and that it has carefully and thoroughly reviewed this Termination Agreement, in its entirety, with that counsel.

f. Any corporation signing this Termination Agreement represents and warrants that such execution is duly authorized. Any individual signing this Termination Agreement on behalf of a corporation represents and warrants that he or she has full authority to do so on behalf of the corporation.

g. In the event that any party commences any action in a court of law to enforce this Termination Agreement or obtain damages for the breach of this Termination Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees, expenses, and costs incurred in such action.

h. The terms and conditions in this Termination Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each of the parties.

i. This Termination Agreement shall not be effective as to any party until fully executed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Termination Agreement as of the date set opposite their signature.

LAKEVIEW TERRACE UNIT OWNERS'
ASSOCIATION

Dated: _____

By: _____

Its: _____

BARTON WOODS, INC.

Dated: _____

By: _____

Its: _____

EXHIBIT A

2°12'30"E 25.00 ft.; thence N 87°47'30"E 13.00 ft.;
thence S 2°12'30"E 25.00 ft.; thence S 2°11'48"W 33.37
ft.; thence along the boundary of Lakeview Terrace
Condominiums Phase 1 in the following four courses: S
26°42'30"W 24.00 ft., Northwesterly 122.19 ft. along the
arc of a 300.00 ft. radius curve to the right through a
central angle of 23°20'10" (radius point bears N
26°42'30"E from the beginning of the curve), S 50°02'40"W
133.00 ft., S 14°51'10"E 170.04 ft. to the Northeast
Corner of Lot 55 of said Lakeview Terrace Subdivision;
thence N 86°38'38"W 68.72 ft.; N 70°01'46"W 69.11 ft.;
thence N 44°28'23"W 134.94 ft.; thence N 33°51'54"W 66.65
ft.; thence N 14°33'09"W 65.87 ft.; thence N 4°42'29"W
67.20 ft. to the Northeast Corner of said Lot 61; thence
N 87°24'56"W 130.14 ft. along the North line of said Lot
61 to the Point of Beginning.

04-087-0023

Containing 16.4679 acres.

B. Lakeview is the homeowners association of the condominium project known as Lakeview Terrace Phase I Condominium Project (the "Condominium") in Davis County, Utah, situated on that real property more fully listed and described as follows:

Lakeview Terrace Condominiums Phase No. 1, as the same is defined and established and identified on the record of survey map of Lakeview Terrace (Phase 1) duly recorded in the office of the County Recorder of Davis County, Utah, on November 11, 1979, as Entry No. 550443, and in the Enabling Declaration of Lakeview Terrace Condominium Phase No. 1, dated July 16, 1979, recorded November 11, 1979, as Entry No. 550444, in Book 801, at Page 487, of official records of Davis County, Utah.

Together with an undivided interest in and to the common areas as the same are established and identified in the maps and declarations referred to hereinabove.

The real property underlying the Phase 1 Properties has been more fully described as:

Beginning at the point of reverse curve on the North line of Lakeview Drive (radius point bears South 13°47'08" East) said point being South 87°43'23" East 763.50 feet from the West 1/4 corner of Section 28, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and running thence easterly along the arc of an 1808.83 foot radius curve to the right 177.52 feet; thence North 01°15' West

63.00 feet; thence North 65°45' East 130.27 feet; thence North 12°04'20" West 112.564 feet along a radial line to a point on a 340.00 foot radius curve to the right; thence westerly along the arc of said curve 115.155 feet; thence North 07°20' East 24.00 feet along a radial line to a point on a 316.00 foot radius curve to the right; thence westerly along the arc of said curve 52.12 feet to the point of tangent with a 276.00 radius curve to the right (radius bears North 16°47' East); thence westerly along the arc of said curve 46.726 feet; thence South 26°29' West 24.00 feet along a radial line to a point on a 300.00 foot radius curve to the right; thence westerly along the arc of said curve 122.188 feet; thence South 49°49'10" West 133.00 feet; thence South 15°04'40" East 170.04 feet; thence South 00°12'44" West 123.07 feet along the East line of Lot 55, Lakeview Terrace to the Southeast corner of said Lot 55; thence easterly along the arc of a 420.00 foot radius curve to the left (radius point bears North 00°12'44" East) 102.61 feet to the point of beginning.

C. The PUD and the Condominium are contiguous to each other and, also, are contiguous to a parcel of real property designated as a clubhouse and related common amenities (the "Clubhouse Property") title to which is vested in Lakeview and which property has been more fully described as follows:

Beginning at a point South 87°24'5" East 855.26 feet and North 5°16'25" West 317.28 feet from the West quarter corner of Section 28, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and running thence North 1°58'15" East 33.37 feet; thence North 2°26' West 25 feet; thence South 87°34' West 13 feet; thence North 2°26' West 25 feet; thence North 42°0' East 87 feet; thence South 47°26' East 38.46 feet; thence North 87°34' East 85 feet; thence South 2°26' East 120 feet; thence South 87°34' West 64.44 feet; thence South 7°20' West 30.70 feet to a point on a 316 foot radius curve to the right (radius point bears North 7°20' East); thence westerly along the arc of said curve 52.12 feet to the point of tangency with a 276 foot radius curve to the right; thence westerly along the arc of said curve 46.726 feet to the point of beginning.

The Condominium and the Clubhouse property are jointly referred to herein as the "Lakeview Properties."

D. The parties agree that it is to the mutual benefit of the Condominium, to the PUD, and to their respective lot owners or unit owners (sometimes referred to herein as the "Owners") to have mutual and joint access to, and to share proportionately the common area costs of the common areas of the PUD and of the Lakeview Properties.

E. Access to portions of the PUD shall be on and over the streets of the Lakeview Properties; and Lakeview is willing to grant easements for access to the PUD property over these streets with permanent easements for access to the portion of the PUD along Fremont Road.

F. As partial consideration for this Agreement, Barton Woods is willing to expend, or cause expenditure of, money to make certain improvements to portions of the Lakeview Properties, more fully specified and provided herein.

G. The parties also desire by contract to provide for the common use, sharing of costs, management, making and collecting of assessments and other related matters with respect to the Lakeview Properties.

H. The parties desire to formalize the provisions of their agreement.

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree and represent as follows:

1. Rights to Common Areas Facilities and Rights of Access.

The parties desire, through this contract, to provide mutual access and use by both parties hereto and by all owners, their guests and invitees, to the common areas and facilities of both the PUD and the Lakeview Properties, including but not limited to the rights of the use of the Clubhouse Property and the facilities and amenities, on the terms provided herein. Moreover, the parties, by contract, desire to grant to both parties, and to their respective owners, guests and invitees, right and access to and over the roads respectively in the PUD and in the Lakeview Properties. Accordingly, the parties agree:

a. Lakeview, for itself, the Condominium and the Condominium's owners, hereby grants to Barton Woods, to the PUD, and to the PUD's owners, guests and invitees:

i. The right to use the common areas and facilities of the Lakeview Properties to the same extent as the Condominium owners have the rights to the use thereof; and

ii. Full rights to access, ingress and egress and use of streets, sidewalks and other common areas of the Lakeview Properties during the term hereof.

iii. Easements, during the duration and continuation of this Agreement, for ingress and egress on, over and across the streets in the Lakeview Properties, as described in the Record of Survey Map of the Condominium

and of all other documents affecting the Condominium on record with the Davis County Recorder.

iv. A permanent easement evidenced by recordable instrument for ingress and egress on, over and across the streets in the Lakeview Properties to and from Fremont Road within the PUD.

b. Barton Woods, for itself, the PUD, and the PUD's owners, guests and invitees, hereby grants to Lakeview, to the Condominium and to the Condominium owners, guests and invitees:

i. The right to use the common areas and facilities of the PUD to the same extent as the PUD owners have the right to the use thereof; and

ii. Full rights, during the duration and continuation of this Agreement, to access, ingress and egress and use of streets, sidewalks and other common areas of the PUD.

It is specifically understood and agreed that the respective rights and interests granted under this paragraph are contract rights only. Nothing in this Agreement is intended, nor shall it be construed:

a. To grant to Barton Woods, to the PUD, or to the PUD owners, guests and invitees, any title or ownership in and to the Lakeview Properties, or the common areas and facilities of the Lakeview Properties.

b. To grant to Lakeview, to the Lakeview Properties or to the Condominium owners, guests and invitees, any title or ownership in and to the PUD or the common areas and facilities of the PUD.

2. Effective Date. This Agreement shall take effect upon the later of the following:

a. The approval by Bountiful City and recording of the Enabling Declaration of Covenants, Conditions and Restrictions of Barton Woods Planned Unit Development; or

b. Receipt of the necessary consents and approvals of Lakeview and the Condominium owners as required by Barton Woods to effectuate the provisions hereof.

Notwithstanding any provision to the contrary, either party may terminate this Agreement, except for the permanent easement specified in subparagraph 1(a)(iv) above, by written notice if the above-specified conditions precedent do not occur on or before December 31, 1994.

3. Manner of Operation of Clubhouse Property and Common Areas. The parties agree that the operation and dealings with the common areas and facilities of the PUD and of the Lakeview Properties, shall be shared by the respective entities and the owners as follows:

a. Barton Woods shall assume the management responsibilities for both the Lakeview Properties and the PUD, and the operation and maintenance of the respective common areas and facilities. Lakeview grants to Barton Woods a

transition period of nine (9) months from the effective date of this Agreement to assume all of the full and complete responsibilities hereunder.

b. During the term of this Agreement, all common area expenses of the PUD and of the Lakeview Properties shall be shared among all PUD and Condominium owners, with the owner of each PUD lot and of each Condominium unit paying its proportionate share of all of the combined common area and expenses of the PUD and of the Lakeview Properties. The common areas hereunder are the streets, sidewalks, landscaping, clubhouse amenities and recreational facilities, and all other areas designated as common areas on the respective Condominium Declaration and PUD Declaration; provided, however, that common areas, for purposes of this Agreement, shall not include any costs or expenses for structural improvements or renovations of structures outside the ordinary maintenance of exteriors of the respective dwelling units or lots.

c. Each party hereto shall continue to remain in good standing, with a designated management committee or board of directors in place.

d. Lakeview shall be entitled, during the entire term of this Agreement, to have a representative serve on the Barton Woods management committee and who will have voting rights on budget matters affecting both the PUD and the Lakeview Properties. This Lakeview member shall also have the

right of veto as to any matters affecting only the Lakeview Properties and not affecting the PUD or its budget.

e. Barton Woods shall, after consultation with the management committee of Lakeview, establish a combined budget, on an annual basis, for the PUD common areas and the Lakeview Properties common areas. Each party shall, to the extent required under its respective covenants, fully cooperate in the allocation and collecting of the payment of expenses and assessments.

f. Barton Woods shall handle the record keeping, collection and disbursement of money, filing and recording of notices, and other management duties on behalf of both the PUD and the Condominium, common areas and management.

g. Lakeview shall fully cooperate with Barton Woods in handling all dealings and assessments with the Condominium owners and shall promptly deliver to Barton Woods any and all information received by Lakeview with respect to any information, complaints or other input from the Condominium owners.

h. Lakeview, by and through its authorized representatives, shall have the full right to examine the books and records of Barton Woods as they affect the handling and management of the Lakeview Properties common areas; and Lakeview shall have the right to disburse the information to or among the Condominium owners and any lien holders on any Condominium property.

i. All existing funds of Lakeview, as of the effective date, shall continue to be the sole property of Lakeview and shall be applied, used, or disbursed at the discretion of Lakeview.

j. Lakeview agrees that, without cost to Barton Woods, Barton Woods shall be entitled to utilize the existing tools, maintenance supplies and equipment presently owned by Lakeview for Barton Woods' services under this Agreement.

k. Each party agrees to enforce its respective covenants, conditions and restrictions for the collection, enforcement and filing of liens, as necessary, to collect their respective amounts for their share of the shared common area expenses.

4. Repairs and Renovations to Properties. As partial consideration for the right to use and share the Lakeview Properties, Barton Woods shall, at Barton Woods's sole expense, excluding any contribution from maintenance fees paid by Lakeview unit owners, take or cause to be taken, the following actions and to expend up to and no more than, \$150,000 with respect to the current properties within the Lakeview Properties, such expenditure to be upon Barton Woods' reasonable determination as to the most efficient and cost-effective use of the funds and the nature of the work which is required to be made to bring the improvements into usable and reasonable condition. The work to be accomplished includes the following:

a. Repair and resurface the tennis courts.

b. Repair the swimming pool, including concrete edging surrounding the pool.

c. Repair and/or resurface the cool deck.

d. Renovate the clubhouse, providing roof repairs, painting, repairing the tile, adding new carpeting where necessary, installing appliances in kitchen area and making other repairs which Barton Woods determines are appropriate and necessary.

e. Repair and resurface existing streets within the Condominium.

f. Improve the exterior, including but not limited to roof and driveway replacements, curb and gutter repairs, replacement of rain gutters, and landscaping improvement, as needed, of the existing ten (10) Condominium units in the Condominium to conform as much as possible architecturally with the improvements on the PUD. The parties acknowledge and agree that the improvements specified in this subparagraph 4(f) shall have priority over the other improvements in this paragraph 4 and, except as otherwise agreed by Lakeview, shall be completed first, up to the total required \$150,000 expenditure.

This work shall be accomplished in stages, according to a reasonable schedule established by Barton Woods, it being understood that final completion may occur on or before December 31, 1994.

5. Mutual Representations. Each party, as an inducement to the other party, respectively represents as follows:

a. Barton Woods is authorized and entitled, pursuant to its corporate powers and pursuant to the documents governing the PUD, to enter into and to carry out the provisions of this Agreement.

b. Lakeview represents and authorizes that it is authorized to enter into this Agreement and to bind Lakeview and Condominium owners for the sharing and use of the facilities and the other provisions of this Agreement as it relates to the rights and interests of Barton Woods.

c. The parties agree that Barton Woods shall have the right to record, with respect to the Lakeview Properties, a memorandum of this Agreement to protect the rights of Barton Woods in and to the continuing use and interest hereunder.

6. Termination of Agreement. This Agreement shall terminate at the earlier of the following:

a. The mutual written consent of both parties.

b. Upon the option of either party, if the other party defaults in any of the covenants or agreements herein, and fails to correct that default after written notice to the other party.

Notwithstanding any provision herein to the contrary, this Agreement (except for the easement specified in subparagraph 1(a)(iv) above) shall terminate fifty (50) years from the effective date hereof, upon written notice by either party no later than one

hundred eighty (180) days prior to the fifty (50) year term. If not terminated at the end of fifty (50) years, the Agreement shall continue for successive periods of ten (10) years each until terminated by written notice by either party at least one hundred eighty (180) days prior to the end of the then-effective extended term.

7. Execution of Documents. The parties agree to execute, deliver and record all deeds, easements, consents and all other documents necessary to effectuate the provisions of this Agreement.

8. Notices. Any notices required to be sent to the parties hereunder may be sent to them by certified or registered mail at the addresses shown below, or to such other addresses specified in writing.

9. Default. If either party defaults in any covenants or agreements herein contained, the defaulting party shall pay all costs and expenses, including reasonable attorney's fees, incurred by the other party in enforcing its rights arising under this Agreement, whether incurred through legal action or otherwise.

10. Binding. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, agents, personal representatives, successors and assigns.

11. Savings Clause. If any court of competent jurisdiction determines that any portion of this Agreement is unenforceable, this Agreement shall continue in full force and effect with the unenforceable provision eliminated, and with all other provisions continuing in full force and effect.

12. Paragraph Numbers and Headings. The paragraph and subparagraph headings and numbers used herein are for purposes of convenience and shall not be considered in the interpretation of this Agreement.

ADDRESS:

BARTON WOODS, INC.
A Utah Non-Profit Corporation

By *Lynnda Peterson*
Its

ADDRESS:

*1040 So. Fremont Rd
Bountiful, UT 84010*

LAKEVIEW TERRACE UNIT OWNERS
ASSOCIATION
A Utah Non-Profit Corporation

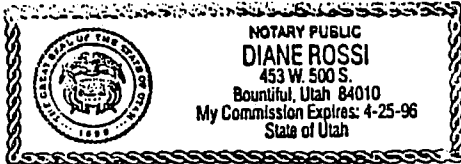
By *Robert S. Law*
Its *Trustee*

By *Kenneth H. Ben*
Its *TRUSTEE*

By *Dale M. Zepher*
Its *Trustee*
*1068 So. Fremont Rd.
Bountiful, UT. 84010*

STATE OF UTAH)
COUNTY OF DAVIS) ss.

On the 12th day of January, 1993, A.D. personally appeared before me, Lynda R. Hobson, who being duly sworn, did say that she is the President of Barton Woods, Inc., a Utah Non-Profit Corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors.



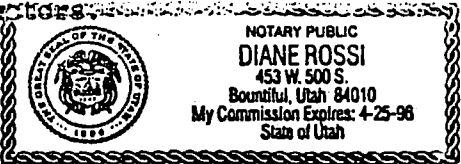
My Commission Expires: 4-25-96

Diane Rossi
Notary Public

Residing at: Bountiful Utah

STATE OF UTAH)
COUNTY OF DAVIS) ss.

On the 12th day of January, 1993, A.D. personally appeared before me, Robert G. Larson, Kenneth L. Kerr, and Dale M. Nebeker, who being duly sworn, did say that they are the Trustees of Lakeview Terrace Unit Owners Association, a Utah Non-Profit Corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors.



My Commission Expires: 4-25-96

Diane Rossi
Notary Public

Residing at: Bountiful, Utah

EXHIBIT B

201-1-12-95

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CONTRACT

This Contract is made and entered into as of the 9th day of February, 1995, by and between BARTON WOODS, INCORPORATED, a Utah non-profit corporation (BW) and Lakeview Terrace Unitowners Association, a Utah non-profit corporation (LTUA).

RECITALS

- A. BW is the owner, developer, and homeowners' association for the Barton Woods Planned Unit Development (PUD) located in Bountiful, Davis County, Utah.
- B. LTUA is the homeowners' association of the condominiums known as Lakeview Terrace Phase I condominium project located in Bountiful, Davis County, Utah.
- C. The PUD and the condominiums are contiguous to each other and also contiguous to a parcel of real property owned by LTUA designated as a clubhouse and related common amenities, including swimming pool and tennis court (Clubhouse property). LTUA's ten condominium units and Clubhouse property are jointly referred to herein as "Lakeview properties".
- D. The parties agree that it is to the mutual benefit of LTUA, BW and their respective lot or unitowners to have mutual and joint access to the common areas of the PUD and Lakeview properties.
- E. Access to portions of the PUD shall be on and over some of the streets belonging to Lakeview properties ~~for access to PUD property over these streets~~ ^{BL/KLL} with a permanent easement to a portion of the PUD along Fremont Road.

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- F. As consideration for this Contract, BW will expend money to make certain improvements to Lakeview properties more fully specified and provided herein.
- G. It is specifically understood and agreed that the respective rights and interests agreed to herein are contract rights only. Nothing in this Contract is intended nor can it be construed to grant or change any title or ownership of LTUA or BW.
- H. Each party hereto shall continue to remain in good standing, maintain their Utah Corporate Charters, and have permanent officers, management committees or board of trustees in place.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. A certain "COMMON AREA SHARING AGREEMENT", entered into by BW and LTUA on January 12, 1993 is in default by BW, declared null and void, and, all provisions thereof superseded by this Contract.
2. BW will, at its sole expense, repair or replace any street curbs, gutters and street paving damaged by BW during construction work and periodically clean the streets of mud, dirt or any other debris existing due to BW's construction work.
3. BW will, with a maximum expenditure by BW of \$150,000, complete the following repairs, improvements and renovations to Lakeview properties:
 - a. Improve the exteriors of LTUA's ten condominium units, including but not limited to, replacement of roofs as described in the proposal by M&M Roofing Company dated August 15, 1994.

J.C.
J.C.
J.C.

- b. Repair or replace any damaged driveways in LTUA's ten condominium units.
 - c. Install aluminum or vinyl siding on all wood exteriors of LTUA's ten condominium units including soffit, fascia, drip strip, deck railings and fences. (Approval of the color and design of materials used to be made by LTUA's Board of Trustees).
 - d. Replace rain gutters on all the LTUA's ten condominium units.
 - e. Renovate LTUA's landscape as approved by LTUA according to plans presented by BW.
 - f. Repair, replace and improve the Clubhouse property with the remainder of any funds left from the \$150,000 to be spent by BW on the above-referenced improvements with said repairs, replacements and improvements to the Clubhouse property to be as desired by BW and approved by LTUA.
4. The parties agree that the priorities for expending the \$150,000 referenced above will begin with paragraph 3.a. above and continue in the order referenced above with item 3.f. having the lowest priority.
 5. Work on the above-referenced items 3.a. through 3.f. shall be commenced or contracted for by March 30, 1995. If such work is not commenced or contracted for by that date, LTUA will have the option to obtain contractor bids for any such work and the authority to order work to be completed at BW's expense. The entire \$150,000 expenditure for the items listed 3.a. through 3.f. above is to be completed no later than June 30, 1995. In the event BW does not complete said

items and expends \$150,000 by June 30, 1995, BW will be in default under the terms of this Contract.

6. BW agrees to indemnify and hold LTUA harmless for any claim, lawsuit, or judgement for injury to person or property of others arising out of any work done on LTUA, or for any construction work completed on BW property. BW also agrees to protect and hold harmless LTUA from any liens placed by contractors, mechanics, material suppliers on LTUA property, and, to comply with any State, County, or City building regulations or codes.
7. The parties agree to provide mutual access and use by both parties, their separate owners, guests and invitees, to the common areas, streets, and facilities of both the PUD and Lakeview properties.
8. Following completion of improvements to LTUA properties referenced in paragraphs 3.a-f above, LTUA will sign a lease with BW on the Clubhouse property. The lease will contain standard provisions for a term the same as this Contract with provisions including but not limited to:
 - a. BW having full use of the Clubhouse property.
 - b. BW paying any and all costs of maintenance, repairs, improvements, landscaping, utilities, personnel, and fire insurance in an amount representing the current fair market value of the Clubhouse property and Public Liability Insurance in an amount not less than \$1,000,000 with Certificates for all such insurance issued in favor of LTUA.
9. LTUA and it's unitowners shall retain the right and privilege to use and access Clubhouse Property with the same rights, privileges, use and access as may be

granted to the BW Association members and subject to the same rules and regulations regarding the use of the amenities as established by the BW Homeowners' Association.

10. In the event LTUA unitowners or residents choose to make use of the swimming pool and/or tennis court on Clubhouse property, each unitowner or resident will pay BW an annual fee, not to exceed \$150.00 for the use thereof.
11. BW will agree to indemnify and hold LTUA and it's owners harmless for any claim, lawsuit, or judgement involving injury to person or property arising from operation of the Clubhouse Property.
12. Effective date of this Contract shall be on such date as both parties have executed it.
13. LTUA shall be entitled, during the term of this Contract, to have a representative serve on the BW management committee who will have no voting rights on BW business, but will have the full and complete right to veto any matter affecting only the Lakeview properties.
14. This Contract shall terminate at the earlier of the following:
 - a. Mutual written consent of both parties.
 - b. Fifty years from the effective date hereof, provided written notice of either party is made no later than one hundred eighty (180) days prior to the end of the fifty years term. If not then terminated, the Contract shall continue for successive periods of ten (10) years each.
15. Any notices required to be sent to the parties may be sent to them by certified or registered mail at the addresses here shown:

LAKEVIEW TERRACE UNITOWNERS' ASSOCIATION
1040 South Fremont Road - Bountiful, Utah 84010

BARTON WOODS, INCORPORATED

420 No. Main, Centerville, Utah 84014

- 16. If either party defaults on any of the covenants, conditions, or agreements herein contained, the defaulting party shall pay all monetary damages, including costs and attorney's fees, incurred by the other party in enforcing its rights arising under this Contract, whether incurred through legal action or otherwise.
- 17. This Contract shall be binding upon and inure to the benefit of the parties, their heirs, agents, personal representatives, successors, and assigns.

BARTON WOODS, INCORPORATED

by Lynda R. Hansen, President

LAKEVIEW TERRACE UNITOWNERS' ASSOCIATION

by Robert New, Trustee 2/1/95

Colleen L. Colton 2/11/95

Kenneth Gene 2/12/95

EXHIBIT C

WHEN RECORDED, PLEASE RETURN TO:

David J. Crapo
WOOD QUINN & CRAPO, L.C.
60 E. South Temple, Suite 500
Salt Lake City, UT 84111

GRANT OF EASEMENT

In consideration of the promises and obligations set forth in the Mutual Termination Agreement dated _____, 1997, and other good and valuable consideration, from Lakeview Terrace Unit Owners' Association ("Grantee"), the adequacy and receipt of which is hereby acknowledged, Barton Woods, Inc. ("Grantor"), being the owner of real property located in Bountiful, Davis County, Utah, hereby grants to Grantee, the owner of real property located adjacent to the property of Grantor, and to the heirs and assigns of Grantee, a perpetual, non-exclusive, right-of-way easement, over and across the existing and future streets located on Grantor's property, for the purpose of ingress and egress by pedestrian and vehicular traffic to Grantee's property for the benefit of Grantee's homeowners and their guests and invitees. The real property affected by this easement permitting the right of ingress and egress by Grantee over Grantor's property is located in Bountiful, Davis County, Utah, and is more particularly described as follows:

As set forth in the attached Exhibit A, incorporated herein by this reference.

WITNESS the hand of said Grantor this ____ day of _____, 1997.

BARTON WOODS, INC.

By: _____
Its: _____

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On this ____ day of _____, 1997, personally appeared before me _____, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the _____ of Barton Woods, Inc., and that the foregoing instrument was signed by him/her on behalf of said corporation by authority of its bylaws, and said _____ duly acknowledged to me that said corporation voluntarily executed the same for its stated purposes.

NOTARY PUBLIC

EXHIBIT A

Beginning at the Northwest Corner of Lot 61 of Lakeview Terrace Subdivision in Bountiful City, Davis County, Utah, which point is N 0°04'30"E 393.91 ft. along the Section Line and East 244.18 ft. from the West Quarter Corner of Section 28, T.2N., R.1E., S.L.B.&M. and running thence along the boundary of Lot 62 of said Lakeview Terrace Subdivision in the following nine courses: Northeasterly 207.33 ft. along the arc of a 420.00 ft. radius curve to the right through a central angle of 28°16'59" (radius point bears S 87°24'56"E from the point of beginning), Northeasterly 253.12 ft. along the arc of a 280.00 ft. radius curve to the left through a central angle of 51°47'44" (radius point bears N 59°07'57"W from the beginning of the curve), N 82°44'33"E 154.42 ft., N 74°50'01"E 181.72 ft., N 77°55'11"E 292.54 ft., S 72°14'20"E 399.28 ft., S 0°24'05"W 803.99 ft., Southwesterly 122.36 ft. along the arc of a 370.88 ft., radius curve to the right through a central angle of 18°54'12" (radius point bears N 18°40'42"W from the beginning of the curve), Southwesterly 257.69 ft. along the arc of a 1,808.83 ft. radius curve to the left through a central angle of 8°09'45" (radius point bears S 01°13'30"W from the beginning of the curve to the Southeast Corner of Lakeview Terrace Condominiums Phase 1; thence along the boundary of said Phase 1 in the following four courses: N 1°01'30"W 63.00 ft., N 65°58'30" E 130.27 ft., N 11°50'50"W 112.56 ft., Westerly 115.15 ft along the arc of a 340.00 ft. radius curve to the right through a central angle of 19°24'20" (radius point bears N 11°50'50" W from the beginning of the curve); thence N 7°33'30" E 54.70 ft. along the extended boundary of said Phase 1; thence N 87°47'30" E 64.44 ft.; thence N 2°12'30"W 25.09 ft.; thence N 2°12'30"W 94.91 ft.; thence S 87°47'31" W 85.00 ft.; thence N 47°12'31" W 38.46 ft.; thence S 42°13'30" W 87.00 ft.; thence S 2°12'30" E 25.00 ft.; thence N 87°47'30" E 13.00 ft.; thence S 2°12'30"E 25.00 ft; thence S 2°11'48"W 33.37 ft.; thence along the boundary of Lakeview Terrace Condominiums Phase 1 in the following four courses: S 26°42'30" W 24.00 ft., Northwesterly 122.19 ft. along the arc of a 300.00 ft. radius curve to the right through a central angle of 23°20'10" (radius point bears N 26°42'30" E from the beginning of the curve), S 50°02'40" W 133.00 ft., S 14°51'10"E 170.04 ft. to the Northeast Corner of Lot 55 of the said Lakeview Terrace Subdivision; thence N 86°38'38" W 68.72 ft.; N 70°01'46" W 69.11 ft.; thence N 44°28'23"W 134.94 ft.; thence N 33°51'54"W 66.65 ft.; thence N 14°33'09"W 65.87 ft.; thence N 4°42'29" W 67.20 ft. to the Northeast Corner of said Lot 61; thence N 87°24'56"W 130.14 ft. along the North line of said Lot 61 to the Point of Beginning.

Containing 16.4679 acres

EXHIBIT D

WHEN RECORDED, PLEASE RETURN TO:

David J. Crapo
WOOD QUINN & CRAPO, L.C.
60 E. South Temple, Suite 500
Salt Lake City, UT 84111

GRANT OF EASEMENT

In consideration of the promises and obligations set forth in the Mutual Termination Agreement dated _____, 1997, and other good and valuable consideration, from Barton Woods, Inc. ("Grantee"), the adequacy and receipt of which is hereby acknowledged, Lakeview Terrace Unit Owners' Association ("Grantor"), being the owner of real property located in Bountiful, Davis County, Utah, hereby grants to Grantee, the owner of real property located adjacent to the property of Grantor, and to the heirs and assigns of Grantee, a perpetual, non-exclusive, right-of-way easement, over and across the existing and future streets located on Grantor's property, for the purpose of ingress and egress by pedestrian and vehicular traffic to Grantee's property for the benefit of Grantee's homeowners and their guests and invitees. The real property affected by this easement permitting the right of ingress and egress by Grantee over Grantor's property is located in Bountiful, Davis County, Utah, and is more particularly described as follows:

As set forth in the attached Exhibit A, incorporated herein by this reference.

WITNESS the hand of said Grantor this ____ day of _____, 1997.

LAKEVIEW TERRACE UNIT OWNERS'
ASSOCIATION

By: _____
Its: _____

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On this ____ day of _____, 1997, personally appeared before me _____, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the _____ of Lakeview Terrace Unit Owners' Association, and that the foregoing instrument was signed by him/her on behalf of said corporation by authority of its bylaws, and said _____ duly acknowledged to me that said corporation voluntarily executed the same for its stated purposes.

NOTARY PUBLIC

EXHIBIT A

Lakeview Terrace Condominiums Phase No. 1, as the same is defined and established and identified on the record of survey map of Lakeview Terrace (Phase 1) duly recorded in the office of the County Recorder of Davis County, Utah, on November 11, 1979, as Entry No. 550443, and in the Enabling Declaration of Lakeview Terrace Condominium Phase No. 1, dated July 16, 1979, recorded November 11, 1979, as Entry No. 550444, in Book 801, at Page 487, of official records of Davis County, Utah.

Together with an undivided interest in and to the common areas as the same are established and identified in the maps and declarations referred to hereinabove.

The real property underlying the Phase 1 Properties has been more fully described as:

Beginning at the point of reverse curve on the North line of Lakeview Drive (radius point bears South 13°47'08" East) said point being South 87°43'23" East 763.50 feet from the West 1/4 corner of Section 28, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and running thence easterly along the arc of an 1808.83 foot radius curve to the right 177.52 feet; thence North 01°15' West 63.00 feet; thence North 65°45' East 130.27 feet; thence North 12°04'20" West 112.564 feet along a radial line to a point on a 340.00 foot radius curve to the right; thence westerly along the arc of said curve 115.155 feet; thence North 07°20' East 24.00 feet along a radial line to a point on a 316.00 foot radius curve to the right; thence westerly along the arc of said curve 52.12 feet to the point of tangent with a 276.00 radius curve to the right (radius bears North 16°47' East); thence westerly along the arc of said curve 46.726 feet; thence South 26°29' West 24.00 feet along a radial line to the point on a 300.00 foot radius curve to the right; thence westerly along the arc of said curve 122.188 feet; thence South 49°49'10" West 133.00 feet; thence South 15°04'40" East 170.04 feet; thence South 00°12'44" West 123.07 feet along the East line of Lot 55, Lakeview Terrace to the Southeast corner of said Lot 55, thence easterly along the arc of a 420.00 foot radius curve to the left (radius point bears North 00°12'44" East) 102.61 feet to the point of beginning.