

AMENDED AND RESTATED  
DECLARATION OF  
CONDOMINIUM  
FOR  
BOUNTIFUL GARDENS CONDOMINIUMS

**EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED HEREIN**

**RESIDENCY IS RESTRICTED TO  
PERSONS OF AGE 55 AND OLDER**

**AND**

**NO CHILDREN RESIDENTS ARE PERMITTED**

(Carefully read Article V of this Restated Declaration for an  
explanation of these IMPORTANT restrictions)

**March 2019**

## Table of Contents

	RECITALS .....	1
I.	DEFINITIONS .....	2
II.	SUBMISSION TO THE ACT .....	5
III.	COVENANTS CONDITIONS AND RESTRICTIONS .....	5
IV.	COMMON AREA AND EASEMENTS .....	6
V.	HOUSING FOR OLDER PERSONS ACT .....	9
VI.	MANAGEMENT COMMITTEE.....	12
VII.	ASSESSMENTS.....	15
VIII.	USE OF CONDOMINIUM AND COMMON AREAS .....	18
IX.	NO SMOKING .....	21
X.	ANIMAL RESTRICTIONS .....	23
XI.	INSURANCE .....	24
XII.	DAMAGE OR DESTRUCTION.....	26
XIII.	COMMUNITY RULES ASSESSING FINES .....	28
XIV.	REINVESTMENT FEE.....	33
XV.	MORTGAGE PROTECTION.....	35
XVI.	DISPUTE RESOLUTION.....	37
XVII.	ALTERATIONS AND INTERIOR IMPROVEMENTS .....	40
XVIII.	AMENDING THE RESTATED DECLARATION .....	42
XIX.	MISCELLANEOUS .....	42
	Exhibit "A" .....	Legal Description
	Exhibit "B" .....	Bylaws
	Exhibit "B-1" .....	Record Retention Schedule
	Exhibit "C" .....	Fine Schedule
	Exhibit "D" .....	Maintenance Chart

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
FOR  
BOUNTIFUL GARDENS CONDOMINIUMS**

This Amended and Restated Declaration of Condominium for Bountiful Gardens Condominiums ("Restated Declaration") is made and executed by and between the Owners of Units in Bountiful Gardens Condominiums ("Bountiful Gardens") on the date shown below after being voted on and approved by the Owners of Units within Bountiful Gardens and Members of the Bountiful Gardens HOA, Inc. ("Association"), in accordance with the Associations' Governing Documents and the provisions of the Utah Condominium Ownership Act ("Act").

**RECITALS**

- A. Capitalized terms in this Restated Declaration are defined in Article I.
- B. The Amended and Restated Declaration of Condominium of Bountiful Gardens Condominiums ("2006 Amended Declaration") was recorded on December 4, 2006, as entry number 2224568, in the office of the Davis County Recorder.
- C. The 2006 Amended Declaration amended and restated all declarations that had previously been recorded against the Project.
- D. The property that is the subject of this Restated Declaration is situated in and upon certain real property located in Davis County, State of Utah, as specifically described in Exhibit "A", attached hereto and incorporated herein by this reference, including the Common Area that is appurtenant to each Unit as shown on the plat maps for Bountiful Gardens Condominiums, as recorded in the office of the County Recorder for Davis County, State of Utah. There are fifty-two (52) Units at Bountiful Gardens Condominiums.
- E. The Association provides housing primarily for persons fifty-five (55) years of age and older and complies with the provisions of the Housing for Older Persons Act of 1995 ("HOPA"), which outlines the qualifications for housing for older persons exemption established by the Fair Housing Act, found in both state and federal regulations.

NOW, THEREFORE, to accomplish the Owners' objectives, this Restated Declaration is hereby adopted. The 2006 Amended Declaration, and any amendments to the 2006 Amended Declaration, are hereby restated, replaced and amended by this Restated Declaration. It is the intent of the Owners that this Restated Declaration replace all declarations that previously governed the Project, and that this Restated Declaration be the sole set of restrictive covenants governing the Units, the Common Area and the Association. Regardless of any language herein to the contrary, the following are not renounced, rescinded, revoked, replaced or amended: the Plat Maps (as defined herein); the submission and dedication of the real property described in Exhibit "A" to the provisions of the Act and this Restated Declaration; the ratification, approval and incorporation of the Bountiful Gardens HOA, as a Utah non-profit corporation, and the Articles of Incorporation on file with the State of Utah; and, any other provision, paragraph, or section that is required to maintain the legal status of the Project as a Utah condominium which, if repealed, would nullify the legal status of the Project.

It is hereby declared that the Property shall be held, sold, conveyed, encumbered and used, subject to the following Restated Declaration and the covenants, restrictions, limitations, and conditions contained herein, 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 Unit 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 accurate and shall constitute part of this Restated Declaration.

## ARTICLE I DEFINITIONS

When used in this Restated Declaration (including that portion hereof captioned "Recitals" and in the Bylaws attached hereto as Exhibit "B") the terms used shall have the meaning stated in the Utah Condominium Ownership Act and as follows, unless the context otherwise requires:

- 1.1 **Act** shall mean and refer to the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated) as the same may be amended from time to time.
- 1.2 **Articles of Incorporation** shall mean and refer to the Articles of Incorporation of the Bountiful Gardens HOA, Inc. on file or to be filed with the Utah Department of Commerce or its equivalent.
- 1.3 **Assessment** shall mean and refer to any amount imposed upon, assessed or charged a Unit Owner at the Project.
- 1.4 **Association** shall mean and refer to the Bountiful Gardens HOA, a Utah non-profit corporation. The rights, powers, obligations and duties of the Association are vested in the Unit Owners acting collectively as "Members" of the Association and in the Management Committee.

- 1.5 **Bylaws** shall mean and refer to the Bylaws of the Bountiful Gardens HOA, Inc., a copy of which is attached to and incorporated in this Restated Declaration by reference as Exhibit "B".
- 1.6 **Common Areas** or **Common Areas and Facilities** shall mean and refer to and include:
- a) The land on which the building and other improvements are located.
  - b) Those Common Areas and Facilities specifically set forth and designated as such in the Map.
  - c) All portions of the Project not specifically included within the individual Units.
  - d) All Limited Common Areas.
  - e) The foundations, columns, girders, beams, supports, perimeter walls, and roofs constituting a portion of or included in the improvements which comprise a part of the Project.
  - f) All installations for and all equipment connected with the furnishing of Project central services such as gas, water, heat, air conditioning, telephone and electricity.
  - g) All tanks, pumps, motors, fans, compressors, ducts and in general all apparatus, installations and facilities included within the Project and existing for common use.
  - h) All recreational areas and facilities shown on the Map.
  - i) All other parts of the Project normally in common use or necessary or convenient to the Project's use, existence, maintenance, safety or management.
  - j) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein.
- 1.7 **Common Expenses** shall mean all items, things and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Restated Declaration, the Bylaws and such rules, regulations and other determinations and agreements pertaining to the Condominium Project as the Management Committee may from time to time adopt.
- 1.8 **Condominium** shall mean and refer to ownership of a single unit in this Condominium Project, together with the undivided interest in common in the Common Areas and Facilities of the Project.
- 1.9 **Condominium Project** or **Project** shall mean and refer to Bountiful Gardens Condominiums.
- 1.10 **Exclusive Use** shall mean and refer to the use of the Limited Common Areas.

- 1.11 **Governing Documents** shall mean and refer to this Restated Declaration, all amendments to this Restated Declaration, the Association Bylaws, Articles of Incorporation, and rules and regulations.
- 1.12 **Limited Common Areas** shall mean those Common Areas designated in the Restated Declaration as reserved for use of a certain Unit or Units to the exclusion of other Units. Limited Common Areas include parking areas associated with the Units as shown on the Map, and include a Unit's atrium. Section 4.3 below defines some of the Limited Common Areas in more detail.
- 1.13 **Majority** shall mean and refer to the owners of more than fifty percent (50%) in the aggregate in interest of the undivided ownership of the common areas and facilities.
- 1.14 **Management Committee** and the **Committee** shall mean and refer to the Management Committee of the Bountiful Gardens HOA.
- 1.15 **Map** shall mean and refer to the Record of Survey Map on file in the office of the County Recorder of Davis County, Utah.
- 1.16 **Member** shall mean when referring to the Association, each Owner, because he or she is obligated, by virtue of ownership of a condominium Unit to be a Member of the Association, and when referring to the Management Committee, each Owner duly appointed, elected and qualified to serve on that entity.
- 1.17 **Mortgage** shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered. The words "**First Mortgage**" shall mean a Mortgage, the lien on which is prior and superior to the lien of any other Mortgage on the same Condominium Unit.
- 1.18 **Mortgagee** shall mean any person named as a Mortgagee or beneficiary under or holder of a mortgage, deed of trust or other security instrument.
- 1.19 **Project** shall mean and refer to the Property as created and governed by this Restated Declaration and the Bylaws.
- 1.20 **Property** shall mean and refer to the land, the building, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.
- 1.21 **Resident** shall mean and refer to any person living, abiding, dwelling, or occupying a Unit. This includes but is not limited to all the family members, agents, or representatives of Owners.
- 1.22 **Restated Declaration** shall mean and refer to this Amended and Restated Declaration of Condominium for Bountiful Gardens Condominiums.
- 1.23 **Unit** means a separate physical part of the Project intended for any type of independent use, including one or more rooms or spaces located within the building. There are 52 Units

in the Project. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, inter alia and as appropriate, wallpaper, paint, flooring, carpeting and tile. Partition walls (walls common to two Units), shall be deemed to be part of the Units they separate, and each Unit shall be deemed to include as a part thereof the entire area within and extending to the center of such partition walls. The term "Unit" shall not, however, be deemed to include the perimeter walls, floors and ceilings surrounding such Unit. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members or any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit. The term "Unit" shall not be deemed to include the pipes, wires, conduits, or other utility lines running through or under such Unit.

- 1.24 **Unit Number** shall mean and refer to the number which designates a Unit on the Map.
- 1.25 **Unit Owner** or **Owner** shall mean and refer to the Owner of the fee in a Unit and of an undivided interest in the fee simple estate of the Common Areas and Facilities which are appurtenant thereto. In the event a Unit is the subject of an executory contract of sale, the contract buyer shall, unless the seller and the buyer have otherwise agreed and have informed the Committee in writing of such agreement, be considered the Unit Owner for all purposes.

## ARTICLE II SUBMISSION TO THE ACT

- 2.1 The Owners hereby submit to the provisions of the Act all of the real property situated in the County of Davis, State of Utah, described in the attached Exhibit "A".

## ARTICLE III COVENANTS, CONDITIONS AND RESTRICTIONS

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

- 3.1 **Description of Improvements.** The improvements included in the Project are located upon the property described in the attached Exhibit "A," and all of such improvements are described on the Map. The Map shows the number of stories, the number of Units which are contained in the buildings which comprises a part of such improvements, the recreational areas and facilities, and other significant facts relating to such improvements.
- 3.2 **Legal Status of Units.** The Map shows the Unit number of each Unit, its location, dimensions from which its area may be determined, those Limited Common Areas which are reserved for its use, and the Common Areas to which it has access. All Units shall be

capable of being independently owned, encumbered and conveyed. There are two Units within the Project (Units 43 and 44) that have been combined into one tax ID number. However, as shown on the Map, and for the purposes of this Restated Declaration, Units 43 and 44 shall continue to be treated as two separate Units, with the Owner of Units 43 and 44 receiving two votes on Association matters and paying two assessments.

- 3.3 **Common and Limited Common Areas.** Neither the ownership of an undivided interest in the Common Areas nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which it appertains and, even though not specifically mentioned in the instrument of conveyance, such ownership of an undivided interest and such right of exclusive use shall automatically accompany the conveyance of the Unit to which they relate.
- 3.4 **Determination of Interest in Common Areas.** Each Unit Owner shall have an equal interest in the Common Areas of the Association. The common profits, losses and voting rights of the Project shall be distributed among and the common expenses shall be charged equally to the Unit Owners.
- 3.5 **Title.** Title to a Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, without limitation, joint tenancy or tenancy in common.
- 3.6 **No Separation.** No part of a Unit or of the legal rights comprising ownership of a Unit may be separated from any other part thereof during the period of Condominium ownership described herein, so that each Unit, the undivided interest in the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy the Limited Common Areas appurtenant to such Unit, shall always be conveyed, devised, encumbered, and otherwise affected together and shall never be separated from one another. Every gift, devise, bequest, transfer, encumbrance, or other disposition of a Unit or any part thereof shall constitute a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Restated Declaration.
- 3.7 **No Partition.** The Common Areas shall be owned in common by all the Owners of Units, and no Unit Owner may bring action for partition thereof.

#### ARTICLE IV COMMON AREA AND EASEMENTS

- 4.1 **Use of Common Areas and Limited Common Areas.** Subject to the limitations contained in the Restated Declaration, any Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy the Limited Common Areas designated herein (and on the Map) for exclusive use by such Unit Owner.
- 4.2 **Unit Maintenance.** Each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Unit. Each Owner shall have the maintenance responsibilities regarding the Owner's Unit as set forth in the Maintenance Chart Attached hereto as Exhibit "D". Such



maintenance shall include repair or replacement of the interior surfaces of the walls, ceilings, floors, windows and doors forming the boundaries of such Unit and all walls, ceiling, floors, windows and doors within such boundaries. Each Unit Owner shall be responsible for the maintenance, replacement and repair of all windows that are part of that Owner's Unit. In addition to decorating and keeping the interior of such Unit in good repair and in a clean and sanitary condition, Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliance or fixtures that may be in, or connected with, such Unit. No skylights shall be installed in any Unit unless and until an Owner first receives consent from the Association as outlined in Article XVII below.

#### 4.3 Description of Limited Common Area.

- a) **Parking.** The carports set forth on the Plat and designated in this Restated Declaration for a respective Unit shall be Limited Common Area for the Unit and such Owner. Each carport shall be entitled to use the carport that contains the same number as that Owner's Unit.
- b) **Atriums or Former Atriums.** The atriums and any space set forth on the Plat and designated in the Plat or this Restated Declaration for use by a respective Unit or as Limited Common Area shall be Limited Common Area for the Unit and such Owner. Such Limited Common Area shall be appurtenant to each respective Unit and may not be severed from the ownership of the Unit. If the regular, membrane roof of a Unit extends over an atrium, the Association shall maintain that roof. However, the Association shall not be responsible for the maintenance, replacement or repair of any roof made of metal, plexiglass or a similar material that is installed over an atrium. Furthermore, the Association shall not be responsible for the maintenance, replacement or repair of any non-loadbearing walls that surround an atrium and were not part of the Unit's initial construction. If a Unit Owner desires to install a roof over an atrium that will be maintained by the Association, the Unit Owner must (1) agree to use a roofer approved by the Association, (2) install a roof that is similar in appearance to the rest of the roof on that Unit, and (3) follow the procedures outlined in Article XVII below.
- c) **Other.** Any awnings, doorsteps, porches, patios, atriums, or other apparatus intended to serve a single unit, but located outside the boundaries of the unit, shall constitute a Limited Common Area pertaining to that Unit exclusively.

#### 4.4 Maintenance of Limited Common Areas.

Each Owner shall at his sole cost and expense keep the Limited Common Areas designated for use in connection with such Unit in a clean, sanitary and attractive condition at all times. Except as otherwise stated in this Restated Declaration, the Association is responsible for the repair and replacement of the Limited Common Areas. As described in the Maintenance Chart attached as Exhibit "D", each Unit Owner shall be responsible for the maintenance and repair of all fences located outside his or her Unit. An Owner may only replace the wood fence outside his or her Unit with a white vinyl fence after receiving written permission from the Board. If an Owner

has replaced, or in the future chooses to replace, the original wood fence outside his or her Unit, that Owner shall be responsible for the materials, installation, and maintenance costs associated with the replaced fence going forward. Furthermore, each Owner shall be responsible for the maintenance, replacement and repair of the railings located outside the front door of his or her Unit.

- 4.5 **Easement for Encroachment.** If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building(s), by error in the Map, by setting, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.
- 4.6 **Access for Repair of Common Areas.** Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Committee, as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Committee shall also have such rights independent of the above referenced agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the insistence of the Committee or of Unit Owners shall be repaired by the same and shall be restored substantially to the same condition as existed prior to the damage; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damage. Amounts owed by Owners pursuant to the foregoing provision shall be collected by the Committee by assessment.
- 4.7 **Right of Ingress, Egress, Lateral Support.** Each Owner shall have the right to ingress and egress over, upon and across the Common Areas as necessary for access to his Unit, and to any Limited Common Areas designated for use in connection with his Unit, and each Owner shall have the right to the horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with the title to each Unit.
- 4.8 **Easement to Association.** The Association shall have non-exclusive easements to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions which it is obligated or permitted to perform pursuant to this Restated Declaration or otherwise.
- 4.9 **Easement for Utility Services.** There is hereby created a blanket easement upon, across, over and under the Project for ingress, egress, installation, replacement, repair, and

maintenance of all utilities, including but not limited to, water, sewer, gas, telephone, electricity, and other utility services.

- 4.10 **Easements to Pass.** All conveyances of Units hereafter made shall be construed to grant, reserve, and be subject to such reciprocal easements as are provided for herein, even though no specific reference to such easements appears in any such conveyance.

## **ARTICLE V HOUSING FOR OLDER PERSONS ACT**

### **5.1 Association's Compliance with the Housing for Older Persons Act ("HOPA").**

- a) The Association operates its community for occupancy by persons fifty-five (55) years of age or older. Except as otherwise stated in this Article V, Residency in any Unit at Bountiful Gardens is limited to persons fifty-five (55) years of age or older. This reflects the Association's intention to comply with provisions of HOPA, which outlines the requirements for qualification for housing for older persons exemption established by the Fair Housing Act. (§100.304 of HOPA).
- b) As a part of the Association's intent to operate as housing designed for persons who are fifty-five (55) years or older, the Association shall advertise in a manner designed to attract such prospective residents who are also fifty-five (55) years or older. All sales proposals and contracts shall provide notice of the Association's intent to operate housing primarily designed for persons fifty-five (55) years or older. The Association will publish and adhere to these policies demonstrating its intention to qualify for this exemption, including compliance with all rules issued by the State of Utah or HUD for the verification of occupancy in the community. (§100.304 of HOPA).
- c) As a part of the Association's intention to comply with the individual provisions of HOPA, any provision in the Restated Declaration, community rules, or bylaws now existing or hereafter adopted in violation or contradiction to the provisions of state and federal law are void and without effect.

### **5.2 Use of Units.**

- a) Persons under the age of fifty-five (55) may not reside in a Unit. However, as an exception to this rule, a partner who is married to a Unit Owner may reside in the Unit with their Unit Owner spouse. In the event of death or divorce, the surviving or remaining spouse may continue to reside in the Unit as long as their residing in the Unit does not cause the Association to fall out of compliance with HOPA.
- b) The Units in the Association may only be occupied for single family residential purposes and are restricted to such use. As used herein, "single family" means (a) any number of individuals, related by marriage or adoption, within three generations by blood, or (b) a group of not more than three persons who are not so related, living together as a single non-profit housekeeping unit. Unit Owners may not permit family members to reside in their Unit who are under the age of 55.

- c) No more than three (3) persons may occupy each Unit unless all such persons are a family, and related by blood, marriage, or adoption. An exception to this rule is a care giver.
- d) For purposes of this Restated Declaration, a person is a "resident" (or any other form of the word, including "reside" or "residing") when he or she stays in, resides in, occupies, or lives in a Unit for fifteen (15) or more days in any thirty (30) day period. A person is deemed to have resided in a Unit when a person (1) sleeps in the Unit, and (2) the Unit is otherwise considered his or her primary place of abode.
- e) Notwithstanding any other provision of this Article V, a person of less than 55 years of age, who is not a resident, may visit and stay in a Unit as the guest of a Resident for not more than 60 days in any one-year period.
- f) Any contracts or proposals to sell Units at the Association shall clearly state and give notice that the Association is a community designed as an over fifty-five (55) years of age community.
- g) Individuals residing in a Unit as a reasonable accommodation to a resident with a disability (as defined under the Americans with Disability Act (ADA)), shall not be counted in meeting the requirements herein. This exemption shall ensure that the Association does not violate the ADA or HOPA requirements by authorizing reasonable accommodations for residents who, because of a disability, require an attendant, including family members, to reside in their Unit in order for that person to benefit from the ownership of his or her Unit.

### **5.3 Good Faith Defense Against Money Damages.**

- a) The Association, in seeking to rely on HOPA's good faith defense, finds that the Management Committee or individuals residing at the Association shall not be held personally liable for monetary damages where such person(s) acted in good faith in belief that the Association qualifies for a housing primarily for older persons exemption. (§100.38 of HOPA).
- b) The Association has through authorized representatives asserted in writing that it qualifies as housing for older persons and thus, individuals of the Association shall qualify for this good faith belief defense.

### **5.4 Verification of Occupancy.**

- a) By virtue of being a 55-years of age or older community, the Units must be occupied by at least one person fifty-five (55) years of age or older. In determining compliance with this requirement, the residents living in the Unit will be counted, and not only Owners.
- b) The Association will comply with federal and state regulations through use of reliable surveys and affidavits. The following documents are considered reliable for age verification of Unit occupants and may be shown by the following:

- i) Birth certificate, drivers license, passport, immigration card, military identification, or any other state, local or national documentation, provided it contains current information about the Unit occupants age or birth.
  - ii) A self certification in the application affidavit, or other document signed by an adult member of the household asserting that at least one of the Unit occupants is 55 years of age or older will also satisfy age verification under this subject.
  - iii) The Association may, if it has sufficient evidence, consider the household to be occupied by at least one person who is 55 years or older.
  - iv) Statements made under penalty of perjury from third party individuals who have knowledge of the age of the Unit occupants may be used when the household itself refuses to cooperate by providing age verification. Other information, such as statements indicating age in prior applications may also be acceptable. The Association may base its decision for age verification on government documents such as census data. (§100.307 of HOPA).
- c) The Association will survey its current list of residents once every two years, in September of odd years, to ensure that residents are fifty-five (55) years of age or older.
- d) The Association will retain the records of the survey so long as it intends to maintain its age exempt status. (§100.307(f)(I) of HOPA).
- e) As a result of the Association adopting these rules, and in order to maintain an over fifty-five (55) year old community, the Association is authorized and empowered to bring or take legal action as the result of any violations or non-compliance with any of the above age restrictive rules found in the Restated Declaration or community rules. The Association is entitled to evict any residents who resides in a Unit in violation of the HOPA requirements, or to void any contract for sale, and to collect from the offending party any and all costs and fees, including reasonable attorney fees, from the party who seeks to sell or lease a Unit or who seeks to purchase or lease a Unit in violation of any of the provision herein or in violation of any of the provisions of HOPA. Any contracts or sales agreements entered into in violation of the age restrictive requirements are also void and may result in legal action and eviction from the Association.
- f) Any Unit Owner, resident or any other person who violates the provisions of this Article V shall be responsible to pay to the Association the attorney fees and costs incurred by the Association in enforcing the provisions herein, even if the attorney fees or costs do not result in the filing of legal proceedings, or are limited to letters, research, phone calls and consultations. Such fees shall be added on to and become part of the common expense owed by the Unit Owner or resident who has violated the provisions herein.

- g) Prior to any Unit Owner selling his or her Unit, the Unit Owner must provide to the Association's Management Committee, in writing, confirmation that they are selling, transferring or conveying their Unit to a person who is 55 years of age or older.

5.5 **No Authorization to Lease.** Nothing contained herein shall be construed as authorization for a Unit to be occupied by or resided in by a non-Unit Owner.

5.6 **Severable.** The provisions of this Article V shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

## ARTICLE VI MANAGEMENT COMMITTEE

6.1 **Authority and Power of Committee.** Except as hereinafter provided, the Project shall be managed, operated, and maintained by the Association through its Management Committee as agent for the Unit Owners. The Committee shall, in connection with its exercise of any of the powers hereinafter provided, constitute a legal entity capable of dealing in the Association's name. The Management Committee shall have, and is hereby granted, the following authority and powers:

- a) The authority without the vote or consent of the Unit Owners or of any other person to grant or create, on such terms as it deems advisable, utility and similar easements over, under, across, and through the Common Areas.
- b) The authority to execute and record, on behalf of all of the Unit Owners, any amendments to the Restated Declaration or the Map which have been approved by the vote or consent necessary to authorize such amendment.
- c) The power to sue and be sued.
- d) The authority to enter into contracts relating to the Common Areas and other matters over which it has jurisdiction, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained. However, the Management Committee shall not enter into any contract that obligates the Association for more than one year.
- e) The power and authority to convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances have been obtained.
- f) The power and authority to purchase, or otherwise acquire, and accept title to, any interest in real property so long as such action has been authorized by any vote or consent which is necessary under the circumstances.
- g) The authority to adopt, publish and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out

its functions or to ensure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners.

- h) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Committee to perform its functions as agent for the Unit Owners. Any instrument executed by the Committee relating to the Common Areas of the Project that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

**6.2 Composition of Committee; Election; Vacancy.** The Management Committee shall be composed of five (5) members. Committee members shall be elected for two-year terms, with three members of the Management Committee elected one year, and two members elected the next year. Members shall serve on the Committee until their successors are elected and qualify. Only Unit Owners and the spouses of Unit Owners shall be eligible for Committee membership, but no two members of the Management Committee may reside in the same Unit or be the spouse of another Management Committee member. At the annual meeting, each Unit Owner may vote his percentage of undivided ownership interest in favor of as many candidates for Committee membership as there are seats on the Committee to be filled. In the case of a vacancy (unless the vacancy is caused by the Owners voting to remove a Committee Member as discussed below), the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. Committee members shall be reimbursed for all expenses reasonably incurred in connection with Committee business but shall receive no compensation for any services they may render the Association as Committee members. A Committee member may be removed by the vote of more than sixty percent (60%) of the undivided ownership of the common areas at any regular or special meeting of the Unit Owners. If a Committee Member is removed by the vote of the Owners at a regular or special meeting, then the Owners shall elect a new Committee Member at the same meeting to sit on the Committee until the expiration of the term for which the member being replaced was elected.

**6.3 Rights and Duties.**

- a) The business, property and affairs of the Project shall be managed and governed by the Management Committee. Subject to the rights and duties of the Owners, the Committee shall be responsible for the exclusive control and management of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and shall cause the same to be kept in good, clean, attractive and sanitary condition, order and repair; provided, however, that each Owner shall keep the Limited Common Areas associated with his Unit in good, clean, safe, sanitary and attractive condition. The Committee shall be responsible for the maintenance and repair of exterior surfaces of the buildings as set forth in the Maintenance Chart Attached hereto as Exhibit "D", including, without limitation, the painting of the same as often as necessary, the replacement of trim,

the maintenance and repair of roofs, and the maintenance, repair, and replacement of all other Common Areas. In the event of conflict between the provisions of this Article VI and the Maintenance Chart, the Maintenance Chart shall control. The specification of duties of the Committee with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas. The cost of such management, operation, maintenance, and repair by the Committee shall be borne by Assessment as hereinafter provided. The Committee may utilize a manager in carrying out any of its functions which are capable of delegation. The manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Committee itself on behalf of the Association and the Owners.

- b) The Committee may make and enforce reasonable rules and regulations governing the use of the units and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Restated Declaration. The Committee may suspend any Owner's voting rights at the meeting of Unit Owners during any period or periods during which such Owner fails to comply with such rules and regulations, or with any other obligation of such Owner under this Restated Declaration. The Committee may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations or to obtain damages for non-compliance.
- c) The Committee may exercise any other right or privilege given to it expressly by this Restated Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**6.4 Payment for Services.** The Management Committee may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, as well as such other personnel as the Committee shall determine to be necessary or desirable for the proper operation of its functions in the Project. The Committee may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Restated Declaration.

**6.5 Personal Property Ownership and Use.** The Committee may acquire and hold in the name of the Association, for the use and the benefit of all of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners equally. Such interest shall not be transferrable except with the transfer of a Unit. A transfer of a Unit shall transfer ownership of the transferor's beneficial interest in such property to the transferee without any reference thereto, and such beneficial interest may in no event be reserved by the transferor of a Unit.



- 6.6 **Capital Improvements.** There shall be no structural alterations or capital additions to the Common Areas requiring expenditure in excess of \$10,000.00 without the prior approval of Unit Owners holding a majority of the voting power.

## ARTICLE VII ASSESSMENTS

- 7.1 **Agreement to Pay Assessments.** Each Owner of a Unit, by the acceptance of a deed or contract therefor, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with each and every other Owner and with the Association to pay annual assessments made by the Association for the purposes provided in this Restated Declaration and to pay special assessments for capital improvements and other matters as provided in this Restated Declaration. Such assessments shall be fixed, established, and collected from time to time in the manner provided herein.
- 7.2 **Annual Assessments.** The Management Committee is expressly authorized to adopt and amend budgets from time to time. Not later than thirty (30) days prior to the beginning of each fiscal year, the Management Committee shall adopt a budget for the upcoming fiscal year. The Management Committee may, but is not required to, send a written summary of the budget to all Owners within thirty (30) days after the adoption of the proposed budget. Total annual assessments against all Units shall be based upon advance estimates of the Association's cash requirements to provide for the payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas and furnishing other common items and services to the Units; which estimates may include, among other things: expenses of management; taxes and special assessments levied by governmental authorities unless and until such time as the Units are separately assessed; premiums for all insurance which the Association is required or permitted to maintain hereunder; common lighting; water charges; the repair, maintenance and replacement of Common Areas; wages for employees of the Association; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Restated Declaration.
- 7.3 **Apportionment of Expenses.** Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among and assessed to all Unit Owners equally.
- 7.4 **Payment of Annual Assessments.** Annual assessments shall be made on a calendar year basis. The Committee shall give written notice to each Owner as to the amount of the annual assessment with respect to his Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each annual assessment shall be due and payable in monthly installments, with each month installment being due on the first of each month. The Management Committee shall have the authority to charge a late fee on any assessment (including monthly and special assessments) that is not paid within 10 days of the assessment's due date. The late fee shall initially be \$35.00, but the late fee amount may be increased or decreased by the Management Committee by Association rule without amending this Restated Declaration. Additionally, each monthly assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due

and payable if not paid within thirty (30) days after such date. The Association may compound interest monthly. Such monthly assessment becomes payable upon the date the Unit Owner purchases his Unit whether by conveyance of title or entering into a contract of sale and purchase, and thereafter each monthly payment shall be due and payable on the first day of each and every month in advance.

- 7.5 **Inadequate Funds.** In the event that the annual assessment proves to be inadequate during any calendar year for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth herein.
- 7.6 **Special Assessments.** In addition to the annual assessments authorized herein, the Committee may levy in any assessment year, special assessments, payable over such a period as the Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, or replacement of the Common Areas or any other part of the Project, or for any other expenses incurred or to be incurred as provided in this Restated Declaration. This subparagraph shall not be construed as an independent source of authority for the Committee to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs hereof. Any amounts assessed pursuant hereto shall be assessed equally to all Unit Owners. Notice in writing of the amount of such a special assessment and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty days after such date, and shall be subject to the same late fees described in Section 7.4 above.
- 7.7 **Individual Assessments.** In addition to other assessments authorized under this Article VII, the Association may levy against any Owner an individual assessment, payable to the Association over such periods as the Association may determine, for the purpose of paying, in whole or in part, the cost of replacing, repairing, cleaning, or otherwise correcting any damage to Units or Common Areas caused by the intentional or negligent act or omission of any such Owner, his family, guests, invitees, or licensees, except for damages arising from normal wear and tear.
- 7.8 **No Waiver of Assessments.** The failure of the Association, before the expiration of any calendar year, to fix and/or give notice of the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Restated Declaration, or a release of the Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year. However, the date on which payment for such assessments shall become due shall be deferred to a date thirty (30) days after notice thereof shall have been mailed, but in no event sooner than January 1 of the calendar year to which such assessment relates.
- 7.9 **Lien for Unpaid Assessments.**

- a) All sums assessed to any Unit pursuant to this Article VII, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for (a) valid tax and special assessment liens on that Unit in favor of any governmental assessing authority; and (b) encumbrances on the interest of the Unit Owner recorded prior to the date notice of the lien provided for herein is recorded, which by law would be a lien prior to subsequently recorded encumbrances. All other lienors acquiring liens on any Unit after this Restated Declaration shall have been recorded shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.
- b) To evidence a lien for sums assessed pursuant to this Article VII, the Committee, or the Association's attorney, may prepare a written notice of lien setting forth the amount of the assessment, the due date, the amount remaining unpaid, the name of the Owner, and a description of the Unit. Such notice shall be signed by the Committee President or Treasurer, or by the Association's attorney, and recorded in the office of the County Recorder of Davis County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial or non-judicial foreclosure by the Association in the same manner in which mortgages or trust deeds on real property may be foreclosed in Utah. The execution of a substitution of trustee form authorized in Utah Code Section 57-1-22 is sufficient for appointment of a trustee. In any such foreclosure, the Owner shall be required to pay the cost and expenses of such proceeding, the cost and expenses of filing the notice of lien, and all reasonable attorney's fees. All such costs, expenses, and fees shall be secured by the lien being foreclosed. The lien shall also secure, and the Owner shall also be required to pay to the Association, any assessments against the Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, encumber, use, and otherwise deal with the Unit as the Owner thereof.
- c) A release of notice of lien shall be executed by the Association's attorney, by the Committee President or Treasurer or the Manager and recorded in the office of the County Recorder of Davis County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.
- d) Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created under this Article VII, and upon such payment such encumbrancer shall have a lien on such Unit for the amounts paid of the same rank as the lien of his encumbrance.

**7.10 Reserve Fund.** The Management Committee shall cause a reserve analysis to be conducted no less frequently than required by the Act, which currently is every six years. The Management Committee shall review and, if necessary, update a previously

conducted reserve analysis no less frequently than every three years, and shall comply with the remaining requirements of the Act relative to reserve funds.

- 7.11 **Personal Obligation Assessments.** The amount of any annual assessment, special assessment, or individual assessment against any Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit.
- 7.12 **Statement of Account.** Upon payment of a reasonable fee not to exceed the sum of Ten Dollars (\$10.00) or such other amount as may be allowed by the Act, and upon written request of any Owner or mortgagee, prospective mortgagee, or prospective purchaser of a Unit, the Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, and the date such assessments become or became due, with respect to such Unit the amount of the current yearly assessment, and the portion thereof which has theretofore been paid; credit for advance payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums and such statement shall be conclusive upon the Committee in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days after receipt of the request, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien held by the person requesting the statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the said ten (10) day period and thereafter an additional written request is made by such prospective purchaser which request is not complied with within an additional ten (10) day period and the purchaser subsequently acquires the Unit.
- 7.13 **Purchaser's Obligation.** Subject to the provisions of Section 7.12 above, a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

#### **ARTICLE VIII USE OF CONDOMINIUM AND COMMON AREAS**

- 8.1 **Single Family Housing Use.** Each of the Units in the Project is intended to be used for single family residential housing and is restricted to such use.
- 8.2 **Non-Owner Occupancy.** No Owner shall occupy or use his or her unit or permit the same or any part thereof to be occupied for any purpose other than a private residence for the Owner's family. For the purpose of this Declaration, non-owner occupancy means that someone resides in a Unit that an Owner of the Unit does not reside in. Non-owner occupancy includes but is not limited to all leasing and rental type arrangements where the Owner does not permanently reside in the unit. Non-owner occupancy of Units (whether for pay or not) is strictly prohibited. Renting out or leasing of individual rooms or areas

within any Unit is prohibited. Any reference to a tenant or leasing arrangement otherwise in this Declaration is not an indication that such practices are allowed or permitted. In addition to all other remedies for any breach of this Declaration, the Association shall have the right to institute a forcible entry and unlawful detainer proceeding in the name of and on behalf of the Owner of the Unit against anyone residing in a Unit in violation of this provision. Neither the Association nor any agent of the Association shall be liable to the Owner or Occupant for any eviction under this section that is made in good faith. Any expenses incurred by the Association related to an eviction, including attorney fees, service fees, storage fees, constable or sheriff fees, and costs of suit, shall be charged as an Assessment to such Owner. The Management Committee may make exceptions to the prior restriction for the immediate family of an Owner, in its sole discretion and only so long as they otherwise comply with the age requirements and restrictions for the community and do not pay any rent or similar payments. All Residents of an organizationally owned Unit (such as a corporation, partnership, or trust) shall be nonowner occupants unless one or more of the non-owner occupant is/are the sole Owners or Trustees of the organization that owns the Unit, in which case the occupants shall be considered the owners. Non-owner occupants of a organizationally owned unit shall also be considered the Owners for purposes of this section if their biological or adopted children, step children, grandchildren, and/or the spouses of these persons, are the only owners or trustees of the organization. The Management Committee shall have the right to adopt Rules related to these restrictions that may further define and explain the restriction and, in its discretion, are necessary for the proper and complete enforcement of the prior restrictions, including but not limited to Rules related to the monitoring of the occupancy of Units and to restrict any sort of transaction that purports to be something other than a lease but functions essentially as a lease. No Unit in this Association may be sold "under contract"; in any arrangement that allows or is essentially an "option" to purchase after a term of leasing; or in any transaction that otherwise does not require the prompt transfer of title to the Unit to the new Owner. This shall not prohibit any trust deed, mortgage, or similar financing arrangement. The Management Committee shall be allowed to promulgate Rules as it deems necessary to enforce this provision and to gather information and documents related to Units, the transfer of Units, and the Occupants of Units for the purposes of enforcing these provisions.

- 8.3 **Business Restrictions.** No Unit shall be occupied and used except for single-family residential purposes by the Owners and social guests. Because Bountiful Gardens 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 Bountiful Gardens with the exception of services provided only electronically from within the residence and in compliance with the restrictions found in this Restated Declaration, the Association's Bylaws, any rules and regulations adopted by the Management Committee, and all federal, state and municipal requirements.
- 8.4 **Restrictions Concerning Common Areas.** There shall be no obstructions of the Common Areas, including any landscaped areas, by any Owner, or any tenant, guest, invitee, or licensee of an Owner without the prior written consent of the Committee. The Committee may make reasonable rules and regulations prohibiting or limiting or governing the use of the Units and Common Areas to protect the interests of all the Owners and/or to protect the Units or the Common Areas. The rules and regulations shall be consistent with the rights

and duties established by this Restated Declaration. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Committee, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon the prior written consent of the Committee.

- 8.5 **Offensive Activity.** No noxious, destructive, offensive, or illegal activity shall be carried on in any Unit, in any Limited Common Area or Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners or to any person lawfully residing in the complex.
- 8.6 **Automobile Repair.** No work, maintenance or repair of automobiles (i.e. oil changes, brake jobs, tune ups & tire rotations) may be done on Bountiful Gardens' property (roadways & parking areas). Residents may however, make emergency minor vehicle adjustments.
- 8.7 **General Restrictions.** Without the prior written consent of the Committee, nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in the cancellation of any insurance on the Project or any part thereof or the increase of the rate of any insurance on the Project or any part thereof over what the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any guest, lessee, licensee, or invitee of any Owner, and each Owner shall indemnify and hold the Association and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees. No noxious, destructive, offensive or hazardous activity shall be carried on in or upon any part of the Project, nor shall anything be done therein which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to any Owner or to any person at any time lawfully residing in the Project or which may become unsafe or hazardous to any person or property. Each Unit shall be maintained so as not to detract from the appearance of the Project and so as not to adversely affect the value or use of any other Unit.
- 8.8 **Rules and Regulations.** No Owner shall violate the rules and regulations for the use of the Units and Common Areas as adopted from time to time by the Management Committee.
- 8.9 **Restriction on Signs.** No signs, flags or advertising devices of any nature, including, without limitation, commercial, political, informational, or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Committee, except as may be necessary temporarily to caution or warn of danger.
- 8.10 **Window Covers.** Only curtains, drapes, shades, shutters and blinds may be installed as window covers. No window shall be covered by paint, foil, sheets or similar items.
- 8.11 **External Laundering.** Unless otherwise permitted by the Management Committee, external laundering of clothing and other items is prohibited.

## ARTICLE IX NO SMOKING

WHEREAS, the Utah Legislature has adopted findings by the federal Environmental Protection Agency (EPA) determining that environmental tobacco smoke is a Group A carcinogen, in the same category as other cancer-causing chemicals such as asbestos; that there is no acceptable level of exposure to Class A carcinogens; and that exposure to environmental tobacco smoke also causes an increase in respiratory diseases and disorders among exposed persons; and furthermore, the Utah Legislature has found that environmental tobacco smoke generated in a rental or homeowner association Unit may drift into other Units, exposing the occupants of those Units to tobacco smoke, and that standard construction practices are not effective in preventing this drift of tobacco smoke (see Utah Code Ann. § 78b-6-1105); and

WHEREAS, the Utah Legislature has defined as a public nuisance “tobacco smoke that drifts into any residential Unit a Person rents, leases, or owns, from another residential or commercial Unit and the smoke is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property” (see Utah Code Ann. § 78b-6-1101); and

WHEREAS, the Members of the Association desire to take affirmative steps to address the tobacco smoke problem and improve the quality of life for all Residents at Bountiful Gardens; and

WHEREAS, a Resident at Bountiful Gardens who might fall asleep while smoking creates a danger of fire within the smoker’s Unit and in Units within the same Building; and

WHEREAS, allowing smoking in Units or near buildings increases the risk of fire, which risk may increase the cost of insurance; and

WHEREAS, tobacco smoke spread may throughout the ventilation system of a building from a smoker’s Unit to other Units and can cause SIDS in babies while exacerbating allergies and other respiratory problems in the Residents of Bountiful Gardens.

NOW THEREFORE, the Owners of the Units at Bountiful Gardens do hereby adopt this Article IX as a restrictive covenant against the real property known as Bountiful Gardens Condominium located in Davis County, Utah, which real property is more fully described on Exhibit “A” attached hereto.

- 9.1 **Smoking Defined.** The term “smoke”, “smoking” or “tobacco smoke” as used herein includes the inhaling, exhaling, burning, or carrying of any lighted cigarette, electronic cigarette, cigar or other tobacco product, marijuana, illegal substance, or any other substance or item that emits smoke or a smoke-like substance (including vapor from an electronic cigarette).
- 9.2 **Business Invitee Defined.** The term “business invitee” as used herein includes but is not limited to, any contractor, agent, household worker, or other person hired by the Association, a Unit Owner or Resident to provide a service or product to the Association, Unit Owner or Resident.

- 9.3 **No Smoking.** No Unit Owner, family member of a Unit Owner, Resident, occupant, guest, business invitee, visitor or any other person shall smoke cigarettes, cigars, or any other tobacco product, electronic cigarettes, marijuana, illegal substance, or any other substance that emits smoke or a smoke-like substance, inside any Unit or anywhere within the boundaries of the Bountiful Gardens Condominium Project or complex. This prohibition shall include but not be limited to Common Area, enclosed Common Area, Limited Common Areas and Units within the Project and all porches, atriums, patios, decks and parking areas at Bountiful Gardens Condominium.
- 9.4 **Enforcement.** In the event a Unit Owner, Resident, occupant, or a guest occupying a Unit violates the provisions of this Article IX, any Unit Owner or Resident at Bountiful Gardens may bring an action to enforce this Article IX. The Management Committee may bring an action to enforce this Article IX but shall not be required to do so unless it determines it is in the best interest of the Association to bring such an action. Each Owner is responsible for the actions of all other persons residing within or visiting his/her Unit and shall be subject to disciplinary action, fines, court action for an injunction, or any remedies available for the violation of this non-smoking restriction. If any Resident or if the Association is required to hire legal counsel to enforce this non-smoking restriction, the Resident or the Association shall be entitled to recover all attorney fees and costs incurred in connection with such enforcement, whether or not litigation has been commenced. The Association may collect the attorney fees and costs it incurs by any lawful means, including through the use of a special Assessment levied against the Owner of the Unit or through a lien.
- 9.5 **Recovery.** The Management Committee or any Resident who brings legal action against a Resident that violates this Article IX shall be entitled to recover costs and attorney fees from the offending Unit Owner and/or Resident.
- 9.6 **Damages.** In the event that a Resident suffers any damage to personal property due to a violation of any provision of this Article IX, or should an Owner's Unit or the Association's Common Area suffer damage due to a violation of any provision of this Article IX, then the Owner of the Unit from which the violation originated, or if the violation did not originate from within a Unit, the Owner of the Unit in any way associated with the violator, shall be responsible for any and all damages caused by the violation of this Restated Declaration, except to the extent covered by the Association's insurance. Damages may include but shall not be limited to smoke damages to clothing, carpet, walls, paint, or other items of personal property affected by the smoke.
- 9.7 **Presumptions.** A Resident shall be presumed to be smoking in a Unit if (a) the Resident has been observed smoking in or about the premises, or (b) the Resident has admitted to being a smoker, or (c) Residents in adjoining Units do not smoke and can smell smoke in their Unit. The burden of proof shall be on the Resident accused of smoking to prove that they have not smoked in their Unit and that the smoke has come from another Unit or source.
- 9.8 **Nuisance.** Nothing herein shall be construed to prevent any Resident of Bountiful Gardens from bringing an action hereunder or under the laws of the State of Utah to seek an



injunction or damages against any Resident who creates a nuisance through smoking or using tobacco in a Unit or in the Common Area at Bountiful Gardens, nor shall any provision hereof be construed as authorization from the Management Committee or the Association for a Resident to smoke in a Unit or in the Common Area in such a manner so as to create a nuisance.

- 9.9 **Disclosure.** Any Owner who sells his Unit shall specifically disclose to all potential buyers and real estate agents that smoking is prohibited everywhere within the Project, including within the Units. Any Owner who allows someone other than the Owner to reside within or occupy the Unit shall disclose to all persons who reside within his or her Unit that smoking is prohibited within all Units and Common Areas prior to their residency or occupancy.
- 9.10 **Rules.** The Management Committee shall have the authority and power to enact rules and regulations which it deems necessary to enforce this restriction, including a schedule of fines which may be imposed for violation hereof, after proper notice and a hearing.

#### ARTICLE X ANIMALS RESTRICTIONS

- 10.1 **Pets.** No animals, livestock, birds, reptiles, or poultry of any kind shall be raised, bred or kept in any Unit or upon the Condominium Project, except that one (1) dog (of no more than 30 pounds) or (1) cat (of no more than 15 pounds) approved by the Management Committee may be kept by Owners within a Unit provided such pets are not raised, bred, kept or maintained for any commercial purposes. Notwithstanding the foregoing, no animal may be kept within a Unit which, in the good faith judgment of the Management Committee, results in an annoyance, threat of injury, or is obnoxious to Owners or Occupants within the Condominium Project. The Management Committee may exercise its judgment for specific pets even though others are permitted to remain. All fecal matter shall be immediately cleaned up from the Common Area. The Management Committee may adopt Rules adding further restrictions related to pets not inconsistent with this Restated Declaration including but not limited to requirements for registration and the use of leashes and noise and barking limitations.
- 10.2 **Enforcement.** If a Unit Owner, an animal owner, or any individual violates the provisions in Section 10.1 above, the Association or any Unit Owner shall have the right to bring an action to have the animal removed. The Owner of the Unit, or if the animal is in the Common Area, then the Owner of the Unit that authorized or permitted the animal to be brought onto or to remain at the Project, shall pay all costs and attorney fees incurred by the Association or by an individual Owner in removing the animal, with or without legal proceedings being formally initiated in court, including any attorney fees or court costs incurred to ensure the animal is not brought to the Project again. The Association shall also have authority, as described in Article XIII below, to fine any Owner who has permitted an animal to enter the Project or any Unit in violation of this Article X. If an Owner is fined for violating this Article X, the Association shall be permitted to impose an additional fine against the Owner for each day the violation continues.

## ARTICLE XI INSURANCE

11.1 **Insurance and Bond.** The Management Committee shall secure or cause to be secured and maintained at all times the following insurance and bond coverages:

- a) **Fire and Casualty Insurance.** A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of the entire Project as set forth in the Utah Condominium Ownership Act. Such policy or policies shall name as insured the Association, as trustee for the Owners, and all persons holding an interest in the Project or any of the Units, as their interests may appear. Each policy or policies shall provide a standard, non-contributory mortgagee clause in favor of each mortgagee which from time to time shall give notice to the Association of such mortgage. Each policy also shall provide that it cannot be cancelled by either the insured or the insurance company until after ten (10) days prior written notice is first given to each Owner and to each mortgagee who has requested such notice in writing. The Association shall, upon request, furnish to each Owner a certificate of coverage.
- b) **Fidelity Insurance or Bond.** Appropriate fidelity insurance or a bond to protect against dishonesty of members of the Management Committee and any person or entity handling funds of the Committee, including, but not limited to, employees of the professional managers, the minimum amount of such coverage to be as required by the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation.
- c) **Public Liability and Property Damage Insurance.** A policy or policies insuring the Association, the Manager, and each Owner against any liability incident to the ownership, operation, maintenance, or other use of the Project or of any Unit which may arise among themselves, to the public, and to any invitees or guests of the Project or of the Unit Owners. Limits of liability under such insurance shall be not less than \$300,000.00 for any person injured, \$1,000,000.00 for all persons injured in any one accident, and \$100,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement to which the rights of the named insureds as between themselves are not prejudiced. Each such policy shall provide that it cannot be cancelled either by the insured or the insurance company until after ten (10) days written notice to each and all of the insureds.
- d) **Workmen's Compensation Insurance.** The Association shall obtain workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.
- e) **Additional Insurance Provisions.** The following additional provisions shall apply with respect to insurance:

- i) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with condominium projects similar to the Project in construction, nature and use. The provisions of this Restated Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Restated Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.
  - ii) The Association shall have the authority to adjust losses.
  - iii) In no event shall the insurance coverage secured and maintained by the Association be brought into contribution with insurance held by individual Unit Owners or their mortgagees.
  - iv) Each policy of insurance obtained by the Association shall, if possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Management Committee members, the Manager, the Unit Owners, and their respective servants, agents, and guests that it cannot be cancelled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Association or of the Manager without a prior written demand that the defect be cured; and that any "no other insurance" clause therein shall not apply with respect to insurance held individually by Unit Owners.
  - v) The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review shall include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or such other qualified appraisers as the Association may select.
  - vi) Notwithstanding anything herein contained to the contrary, insurance coverages must be in such amounts and meet other requirements of the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation, and the Utah Condominium Ownership Act.
- 11.2 **HO-6 Policy.** As more fully described in § 57-8-43 of the Utah Code, a Unit Owner who owns a Unit that has suffered damage as part of a loss covered by the Association's property insurance policy is responsible for an amount calculated by applying the Unit damage percentage for that Unit to the amount of the deductible under Association's insurance policy. For that reason, each Unit Owner is required to obtain his or her own insurance policy in the form of an HO-6 policy. An HO-6 Policy insures a Unit Owner against the costs associated with paying all or a portion of the Association's deductible.

## ARTICLE XII DAMAGE OR DESTRUCTION

- 12.1 **Association as Attorney in Fact.** All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in fact in their name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.
- 12.2 **General Authority of Association.** Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to damage, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. The proceeds of any insurance collected or insurance maintained by the Association shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in Section 12.4 of this Article XII. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction. It shall be deemed that the first money disbursed in payment for cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance remaining after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners equally.
- 12.3 **Estimate of Costs.** As soon as practicable after an event causing damage to, or destruction of, any part of the Project, the Committee shall obtain complete and reliable estimates of the costs of repair or reconstruction of that part of the Project damaged or destroyed.
- 12.4 **Procedure Regarding Destruction.** In the event of damage to or destruction of part or all of the improvements in the Project, the following procedures shall apply:
- a) If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall diligently be carried out by the Association.
  - b) If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall diligently be carried out and all the Unit Owners shall be assessed for any deficiency on the basis of their respective percentages of undivided interests in the Common Areas and Facilities.
  - c) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the

Association are not alone sufficient to accomplish restoration, and if the Unit Owners within one hundred (100) days after the destruction or damage, by a vote of at least seventy-five percent (75%) of all votes held by all Owners, at a meeting of Owners duly called for such purpose, elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph (b) immediately above.

- d) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Association are insufficient to accomplish restoration, and if the Unit Owners do not, within one hundred (100) days after the destruction or damage, by a vote of at least seventy-five percent (75%) of all votes held by all Owners, at a meeting of Owners duly called for such purpose, elect to repair or reconstruct the affected improvements, the Management Committee shall promptly record with the Davis County Recorder a notice setting forth such facts. Upon the recording of such notice the following provisions shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units:

1. The Project shall be deemed to be owned in common by the Owners;
2. The undivided interest in the property owned in common which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas;
3. Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Unit Owner in the Project; and
4. The Project shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Project, after first paying out of the respective shares of the Owners, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by each Owner.

12.5 **Condemnation.** If at any time or times during the continuance of Condominium ownership pursuant to this Restated Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provision shall apply:

- a) **Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.
- b) **Complete Taking.** In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium

ownership pursuant hereto shall terminate and the condemnation award shall be divided among all Owners equally.

- c) **Partial Taking.** In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the condemnation award to be determined in the following manner: As soon as practicable, the Association shall, reasonably and in good faith, allocate the condemnation award between compensation, severance damages, or other proceeds, and shall apportion the amounts so allocated among and pay the same to the Owners as follows:
- i) The total amount allocated to taking of or injury to the Common Areas shall be apportioned among all Owners equally;
  - ii) The total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned;
  - iii) The respective amounts allocated to the taking of or injury to a particular Unit shall be apportioned to the particular Unit involved;
  - iv) The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable; and
  - v) Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and to their respective mortgagees, as applicable.
- d) **Reorganization.** In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a Member of the Association. Thereafter, the Association shall reallocate the ownership, voting rights, and assessment ratio in accordance with the Act.
- e) **Reconstruction and Repair.** Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified herein in this Article XII covering cases of damage or destruction.

### ARTICLE XIII COMMUNITY RULES ASSESSING FINES

- 13.1 **Fines; Authorization.** The Management Committee is authorized to assess a fine against Unit Owners who violate provisions in the Association's Restated Declaration, Bylaws, or rules and regulations (collectively referred to herein as "Rules"). The assessment of a fine shall be in accordance with the provisions of the Utah Condominium Ownership Act, Utah

Code Annotated, section 57-8-37, the provisions of these community rules, and the rules and regulations adopted by the Management Committee.

**13.2 Written Warning of Violation.** Before assessing a fine, the Management Committee shall provide a written warning of the violation to the Unit Owner informing the Unit Owner that a fine will be imposed if the violation is not cured as stated in the written warning. The written warning shall:

- a) describe the violation;
- b) state the Rule or provision of the Governing Documents that the Unit Owner's conduct violates;
- c) state that the Management Committee may, in accordance with the Utah Condominium Ownership Act, Utah Code Annotated, section 57-8-37, assess fines against the Unit Owner if (i) the violation is not cured (within the time required for a continuing violation), or (ii) if a similar violation is committed again within one year after the day on which the Management Committee gives the Unit Owner the written warning or assess a fine against a Unit Owner; and
- d) for a continuing violation, state a time that is not less than 48 hours after the day on which the Management Committee gives the Unit Owner the written warning by which the Unit Owner shall cure the violation.

**13.3 Repeat Violations.** If a violation is temporarily cured or stopped, but the same violation is repeated by the same Unit Owner or their guest within one year from the date a written warning is first served or fine is assessed on the Unit Owner, the Management Committee shall not be required, prior to assessing a fine or an additional fine, to serve another written warning upon the Unit Owner within the one-year period, but may rely upon the notice provided in the first written warning.

**13.4 Time to Cure.** For a continuing violation, the violation must be cured within a time that is not less than 48 hours of the written warning that is delivered to the Unit Owner, unless such time period is extended by the Management Committee for good cause. The member of the Management Committee or their agent that serves the written warning on the Unit Owner shall write on the notice the (a) date and time the written warning was served on the Unit Owner, and (b) the date and time by which the violation must be cured (if the violation is a continuing violation). If a Unit Owner repeats the violation within one year after receiving the written warning or fails to cure a continuing violation within the time required but less than one year after receiving the warning, the Unit Owner may be assessed a fine.

**13.5 Fines.** The Management Committee may assess a fine against a Unit Owner if (a) within one year after the day on which the Management Committee gives the Unit Owner a written warning, the Unit Owner commits another violation of the same rule or provision identified in the written warning, or (b) for a continuing violation, if the Unit Owner does not cure the violation within the time period that is stated in the written warning. If the violation is fully and completely cured within the time provided in the written warning, and is not

repeated within one year of the time the written warning is first served on the Unit Owner, no fine may be assessed by the Management Committee.

- 13.6 **Additional Fines.** The Management Committee may, without providing an additional written warning, assess an additional fine against a Unit Owner each time a Unit Owner (1) commits a violation of the same rule or provision within one year from the day on which the Management Committee assesses a fine against a Unit Owner for a violation of the same rule, or (2) allows a violation to continue for 10 days or longer after the day on which the management committee assesses the fine. Additional fines shall be assessed according to the amount stated in the Rules for multiple violations.
- 13.7 **Manner of Providing Written Warning and Fine.** The written warning of a violation of the Rules of the association and the written notice of a fine imposed by the Management Committee may be provided to the Unit Owner in any one or more of the following ways:
- a) Delivering a copy to the Unit Owner personally; or
  - b) Sending a copy through first class mail, certified or registered mail (at the discretion of the Management Committee), addressed to the Unit Owner at his or her place of residence, in which case an additional 48 hours shall be allowed to cure the violation; or
  - c) If the person committing the violation is a guest of the Unit Owner, by delivering a copy to the Owner in any manner described in the preceding four subparagraphs.
- 13.8 **Management Committee Action.** Any action by the Management Committee involving a written warning or a notice of fine may be taken by the Association's managing agent or by any officer of the Management Committee if so authorized or later ratified by a quorum of the Management Committee, consisting of 50% or more of the Management Committee 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 Management Committee.
- 13.9 **Violations for Which a Fine May be Assessed.** A fine may be assessed for the violation of a rule listed on Exhibit "C", which is attached and incorporated by this reference. The list of violations of a rule or regulations listed on Exhibit "C" may be modified by the Management Committee, without the need to record an amendment to this Restated Declaration, pursuant to their power to enact rules governing conduct within a project as contained in this Restated Declaration. Only those violations listed on Exhibit "C" and those violations of rules adopted by the Management Committee are the offenses which are subject to a fine. Exhibit "C" may be used to incorporate provisions in the Governing Documents for which a violation may be assessed.
- 13.10 **Continuous Violations.** Each 10-day period during which a violation of the Governing Documents of the Association, the Rules of the Association, or the rules listed on Exhibit "C", continues after the time period expires during which the Unit Owner is required to cure the violation, constitutes a separate violation and is subject to a fine in the amount listed in Exhibit "C". The violation of a provision in the Rules or a provision listed on



Exhibit "C", which is temporarily cured within the time period required in the written warning, but which is repeated or violated again within one year of the date the original written warning was served or fine was assessed, is deemed to be a continuous violation for which another written warning is not required to be served.

- 13.11 **Amount of Fines.** The amount of a fine for a violation of the Rules or the provisions listed on Exhibit "C", shall be in the amount listed on Exhibit "C".
- 13.12 **Late Fees on Fines not paid.** Fines not paid within 10 days of their due date shall accrue (1) a late fee of up to \$40.00 (as determined by the Management Committee) for each month the fine remains unpaid, and (2) interest at the rate of 1.5% per month (compounded monthly) until paid. An additional late fee shall be assessed for each and every 30-day period the fine remains unpaid after it is due. No interest or late fees may accrue until 10 days after a hearing (if requested by the Unit Owner) has been conducted and a final decision has been rendered by the Management Committee.
- 13.13 **Protesting the Fine.** A Unit Owner who is assessed a fine may request an informal hearing 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 Unit Owner protesting the fine shall request the informal hearing by delivering a written request to any member of the Management Committee 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 Unit Owner with respect to the violation or non-violation of the Rules.
  - c) the amount of the fine the Unit Owner claims should be paid and the reasons supporting that claim; and
  - d) any errors made by the Management Committee in calculating, assessing, or collecting the fine.
- 13.14 **Informal Hearing.** Within 21 days of receiving the written request for hearing, the Management Committee shall schedule an informal hearing at which time the requesting Unit Owner will be given an opportunity to present evidence and witnesses supporting the Unit Owners position. The Management Committee shall allow the Unit Owner, committee members, or any other person involved in the hearing to participate in the hearing by means of electronic communication. No formal rules of evidence will be required, and the Management Committee can receive the evidence submitted by the requesting Unit Owner and determine the probative value of such evidence. If it chooses and if it would be of benefit to the requesting Unit Owner, the Management Committee may also produce evidence supporting its decision to fine the Unit Owner. However, the intent of the hearing is to listen to the violating Unit Owner's explanation for his or her behavior or activities and not to have a trial. The Management Committee may terminate the hearing at any time if any individual present becomes unruly, inconsiderate or rude.

**13.15 Decision of the Management Committee.** The Management Committee may, after the requesting Unit Owner has had the opportunity at the hearing to present the evidence desired, may either:

- a) leave the amount of the fine as originally stated;
- b) reduce the fine to an amount agreed upon by a majority of the Management Committee present at the hearing;
- c) reduce the fine to an amount agreed to by the offending Unit Owner with the agreement that the offending Unit 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 Unit Owner not repeating the violation for one year; or
- e) forgive the fine.

The Management Committee shall render its written decision no later than ten (10) days after the date of the hearing.

**13.16 Appeals.** A Unit Owner may appeal a fine by initiating a civil action within 180 days after:

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

**13.17 Lien.** A fine assessed which remains unpaid after the time for appeal has expired becomes a lien against the Unit 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. § 57-8-44.

**13.18 Promulgation of Additional Rules and Fines.** The Management Committee is authorized to adopt and to amend the condominium administrative rules and regulations as may be necessary or desirable to insure the condominium is maintained and used in a manner consistent with the interests of the Unit Owners, to protect and enhance the quality of life in the condominium complex, to protect the property values of the condominium Units, 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 Management Committee may adopt new condominium rules shall be as follows:

- a) New rules shall be adopted at a regular or special meeting of the Management Committee and in conformity with existing law. The rule shall be in writing and voted on and approved by a majority of the members of the Management Committee. 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 and included in Exhibit "C".

- b) Prior to the new rule becoming enforceable, the Management Committee shall cause to be delivered, personally or by regular U.S. mail, a copy of the new rule to each Unit Owner. The new rule shall become enforceable five (5) days from the day it is delivered or mailed to each Unit Owner.
- c) Rules adopted in this manner shall deal only with the health, safety or welfare of condominium residents or condominium property. Rules adopted by the Management Committee may also be used to clarify provisions in the declaration, bylaws, or rules and regulations, or to change the amount of a fine associated with the violation of a Rule.
- d) Rules adopted by the Management Committee shall have the same force and effect as rules contained in the Restated Declaration, the Bylaws, or other Rules adopted by the condominium association, including the power to collect fines from those who violate these rules.

13.19 **Severability.** If any phrase contained in this Article, 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 this Article, 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.

#### **ARTICLE XIV REINVESTMENT FEE**

WHEREAS, the Management Committee has observed and determined that over the years an excessive amount of time and expense has been incurred by the Association in connection with the transfer of a unit within the Association from an existing owner to a new owner. Mortgage companies, real estate agents, lenders and underwriters require various forms to be filled out, completed and signed by the Association for the benefit of the parties buying and selling condominium units; and

WHEREAS, the Management Committee and members of the Association have determined that a Reinvestment Fee would be appropriate and is needed for the use and improvement of the Association's Common Areas and is required to benefit the Common Area property appurtenant to the Units described in Exhibit "A", attached hereto.

WHEREAS, to offset the additional cost borne by the Association in connection with the upkeep and maintenance of the Common Area, the members of the Association have determined that a new purchaser of a unit within the Association shall be assessed a non-refundable Reinvestment Fee of not more .5% of the value of the unit being sold.

NOW THEREFORE, to accomplish the Unit Owners' objectives, the Association has authority to charge a reinvestment fee as described in this Article XIV.

14.1 **Adoption of Reinvestment Fee.** The Association hereby adopts a Reinvestment Fee. The amount of the Reinvestment Fee shall not exceed .5% of the value of the Unit being sold.

The Reinvestment Fee shall be paid by the purchaser of a Unit whenever a Unit is sold, transferred or conveyed to a new Owner.

- 14.2 **Reinvestment Fee Amount.** The Reinvestment Fee shall initially be in the amount of \$150.00. By written resolution, the Management Committee is authorized to increase or decrease the amount of the Reinvestment Fee, but in no event shall the Reinvestment Fee exceed the amount of .5% of the value of the unit being transferred.
- 14.3 **Increase.** If the Management Committee determines that an increase in the amount of the Reinvestment Fee is justified, it shall file for record in the office of the Davis County Recorder an amendment to this Restated Declaration, in the form of a Management Committee resolution, setting forth the amount of the new Reinvestment Fee.
- 14.4 **Binding Fee.** The Reinvestment Fee and the covenant to pay the Reinvestment Fee runs with the property described in Exhibit "A", and is intended to bind successors in interest and assigns of the real property described in Exhibit "A", attached hereto.
- 14.5 **No Additional Reinvestment Fees.** The existence of this Reinvestment Fee precludes the imposition of an additional Reinvestment Fee on the property described in Exhibit "A", attached hereto.
- 14.6 **Duration.** The duration of the Reinvestment Fee covenant is for a period of 50 years.
- 14.7 **Purpose.** The purpose of the Reinvestment Fee required to be paid herein is for the use and improvement of the Association's Common Areas and is required to benefit the Common Area property appurtenant to the Units described in Exhibit "A", attached hereto.
- 14.8 **Exceptions.** The Reinvestment Fee shall not be enforced in the following circumstances or situations:
- a) an involuntary transfer;
  - b) a transfer that results from a court order;
  - c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;
  - d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or
  - e) the transfer of burdened property by a financial institution, except, a financial institution shall be required to pay the Association's costs directly related to the transfer of the burdened property, not to exceed \$250.

## ARTICLE XV MORTGAGEE PROTECTION

- 15.1 **Notification of Delinquency.** From and after the time a mortgagee makes written request to the Management Committee or the Association of Unit Owner therefor, the Committee or the Association shall notify such mortgagee in writing in the event that the Owner of the Unit encumbered by the mortgage held by such Mortgagee neglects for a period of sixty (60) or more days to cure any failure on his part to perform any of his obligations under this Restated Declaration.
- 15.2 **Subordination.** The lien or claim against a Unit for unpaid assessments or charges levied by the Management Committee by the Association of Unit Owners pursuant to this Restated Declaration or the Act shall be subordinate to a First Mortgage affecting such Unit. A Mortgagee who obtains title to a Unit pursuant to his Mortgage or a deed or assignment in lieu of foreclosure shall not be liable for such Unit's unpaid assessments which accrue prior to the acquisition of title to such unit by the Mortgagee and shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to the acquisition of title to such Unit by Mortgagee. No assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not a burden to a Mortgagee coming into possession pursuant to his Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced by either the Management Committee or the Association from or against a Mortgage, a successor in title to a Mortgage, or the Unit affected by the Mortgage concerned (to the extent any such collection or enforcement would to the Mortgagee interested in such Unit.).
- 15.3 **Approval Required.** Without the approval of each First Mortgagee, neither the Management Committee nor the Association of Unit Owners shall be entitled, by act, omission, or otherwise:
- a) to seek to abandon or terminate the Condominium Project or to abandon or terminate the arrangement which is established by this Declaration and the Record of Survey Map (except as provided in Article XII hereof in the event of certain destruction or damage);
  - b) to partition or subdivide any Unit;
  - c) to seek to abandon, partition, subdivide, encumber, sell or transfer all or any of the Common Areas and Facilities (except for the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities except as provided in Article XII hereof in the event of certain destruction or damage);
  - d) to use hazard insurance proceeds resulting from damage to any part of the Condominium Project (whether to Units or to the Common Areas) for purposes other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in the event of substantial loss to the Units and/or common Areas and Facilities;

- e) to change the pro rata interests or obligation of any Unit which apply for (1) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for (2) determining the pro rata share of ownership of each Unit in the Common Areas and Facilities; or
  - f) to alter the provisions of Article XI hereof in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby, or to fail to maintain the insurance coverage described therein.
- 15.4 **Record Examination.** Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Management Committee, or the Association of the Unit Owners, or of the Condominium Project. From and after the time a Mortgagee makes written request to the Management Committee or Association of Unit Owners therefor, the Committee or the Association shall furnish to such Mortgagee copies of such annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Condominium Project as may be prepared for distribution to or use by the Committee, the Association, or the Unit Owners.
- 15.5 **Damage, Loss and Condemnation.** From and after the time a Mortgagee makes written request to the Management Committee or the Association of Unit Owners therefor, the Committee or the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or any taking or anticipated condemnation of: (a) the Common Areas and Facilities involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00); or (b) any Unit involving an amount in excess of, or reasonably estimated to be in excess of, One Thousand Dollars (\$1,000.00). Said notice shall be given within ten (10) days after the Management Committee or said Association learns of such damage, loss, taking or anticipated condemnation.
- 15.6 **Priority.** Nothing contained in this Restated Declaration shall give a Unit Owner, or any other party, priority over any rights of a First Mortgagee pursuant to its Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of condominium Units and/or Common Areas and Facilities.
- 15.7 **Mortgagee Protection.** In the event another provision or clause of this Restated Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority as the case may be, applicable to the Management Committee and Association of Unit Owners with respect to the subject concerned.
- 15.8 **Amendment.** No amendment to this Article which has the effect of diminishing the rights, protection or security afforded to Mortgagees shall be accomplished or effective unless all of the Mortgagees of the individual Units have given their prior written approval to such amendment. Any amendment to this Article shall be accomplished by an instrument executed by the Management Committee and filed for record in the office of the County

Recorder of the county where the Project is located. In any such instrument an officer of the Management Committee shall certify that any prior written approval of Mortgagees required by this Article as a condition to amendment has been obtained.

## **ARTICLE XVI DISPUTE RESOLUTION**

- 16.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Association, Unit Owners, all persons subject to this Restated Declaration, and any person not otherwise subject to this Restated Declaration who agrees 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 16.2, shall be subject to the procedures set forth in this Article XVI.
- 16.2 Exempt Claims.** The limitations in this Article XVI pertaining to exhausting administrative remedies shall not apply to the following Claims ("Exempt Claims"):
- a) Any lien, claim, action or complaint wherein the Association or the Management Committee alleges against a Unit 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) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VIII (Use of Condominium and Common Areas), Article IX (Smoking Prohibited), Article X (Animals Prohibited), and Article XVII (Alterations and Improvements); and
  - c) Any suit between Owners seeking redress on the basis of a claim which would constitute a course of action under the law of the State of Utah in the absence of a claim based on the 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.
  - e) Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 16.3, but there shall be no obligation to do so.

**16.3 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 16.2, 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 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 Management Committee (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 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 XVI and may seek judicial relief without the need to wait for additional time periods to expire.

16.4 **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 16.3, including the fees of its attorney or other representative.

16.5 **Enforcement of Resolution.** If the parties agree to resolve any Claim through negotiation in accordance with Section 16.3 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 16.3. 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 XVII ALTERATIONS AND INTERIOR IMPROVEMENTS

17.1 **Approval Required.** No Owner, person or Resident (collectively referred to herein as "Applicant") shall, without the prior written consent of the Management Committee, make or permit to be made any change, modification, alteration, improvement or addition (collectively referred to herein as "Improvement(s)") in or to any (a) Common Area, (b) Limited Common Area, or (c) structural portions of any Unit. No Applicant shall, without the prior written consent of the Management Committee, do any act that would impair the structural soundness or integrity of the Common Areas or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any Improvement or addition to the Common Areas and Facilities. Without limiting the foregoing, prior written approval from the Management Committee is required prior to the inception of any of the following Improvements:

- a) Structural changes to the interior of a Unit;
- b) Any Improvement involving or impacting electrical, plumbing or any other utility lines;
- c) Repairs or remodels requiring any type of utility shut-off;

No Improvement to the exterior of the building or the interior common area is permitted.

17.2 **Review Procedures.** The following procedures shall govern requests for Improvements to any Common Area, Limited Common Area, or to the structural portions of any Unit:

- a) Detailed plans, specifications, and related information regarding any proposed Improvement, in a form and content acceptable to the Management Committee, shall be submitted by the Applicant to the Management Committee at least thirty (30) days prior to the projected commencement of construction. No Improvements shall be commenced prior to approval by the Management Committee. The application and plans shall include the following information: building materials to be used, start date and estimated completion date, storage location of building material, disposal plans for refuse and construction material (dumpster size, location, duration), and any additional information determined by the Management Committee.
- b) The Management Committee shall give the Applicant written notice of approval, conditional approval or disapproval. If the Management Committee fails to approve, conditionally approve, table or disapprove within thirty (30) days after receipt of application and plans, and all other information requested by the Management Committee, then approval shall be deemed to be granted; provided that the Improvements are done in accordance with the plans, specifications and related information which were submitted.
- c) If an Owner does not request approval as required herein, the approval shall be deemed to be denied and any Improvement made by the Owner shall be a violation of these requirements.

- d) In additional to paragraphs (a) through (c) above, additional procedures, applications or submission requirements may be required by the Management Committee.
- 17.3 **Review Expenses.** The Applicant desiring to make an Improvement shall pay all costs and expenses incurred by the Management Committee in connection with a review of the Applicant's plans, including but not limited to professional fees incurred by the Management Committee in connection with a review of the plans by an engineer, architect or other qualified professional. The Management Committee shall collect from the Applicant, at the time the Applicant submits the application and plans to the Management Committee, a sum sufficient to pay all anticipated expenses associated with a professional review of the plans. The review process shall not begin until all sums required by the Management Committee has been received.
- 17.4 **Deposit Required.** The Management Committee may require an Owner to day a damage and compliance deposit to the Association before an Owner begins construction on Improvement to any Common Area, Limited Common Area, or to the structural portions of any Unit. If the Management Committee requires a deposit, the Management Committee shall determine the amount of the deposit, which shall be paid before any construction begins. The amount of the deposit shall be sufficient to cover any projected damage and repair to the Common Area associated with the Improvement. Checks should be made payable to the Bountiful Gardens HOA. Deposits shall be refundable thirty (30) days after final inspection and determination by the Management Committee that no damages have been inflicted upon the Common Areas or adjoining Units. Should the initial deposit not be sufficient to cover damages (repair, replacement or to clean), then the Management Committee may stop the Improvement until additional funds are deposited.
- 17.5 **Owners Responsibility/Indemnity.** The Owner who causes an Improvement to be made, regardless of whether the improvement is approved by the Management Committee, shall be responsible for the construction work and any claims, damages, losses, or liabilities arising out of the Improvements. The Owner, and not the Management Committee, is responsible for determining whether any Improvement is in violation of any restriction imposed by any governmental authority having jurisdiction over any portion of the Property. The Owner shall hold harmless, indemnify, and defend the Association, the Management Committee, and its officers, directors and committee members, from and against any expenses, claims, damages, losses or other liabilities, including without limitation attorney fees and costs of litigation arising out of (1) any Improvement which violates any governmental law, codes, ordinances, or regulations, (2) the adequacy of the specifications or standards for construction of the Improvements and (3) the construction of the Improvements.

**ARTICLE XVIII  
AMENDING THE RESTATED DECLARATION**

- 18.1 **Amendment.** Except as provided below, the vote of at least fifty-one percent (51%) of the undivided ownership interests in the Common Areas and Facilities shall be required to amend this Restated Declaration, the Bylaws, or the Record of Survey Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Committee. In such instrument, the Committee shall certify that the vote required for amendment by this paragraph has occurred.
- 18.2 **Consent Equivalent to Vote.** In those cases in which the Act or this Restated Declaration requires the vote of a stated percentage of the Project's undivided ownership interests for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction for Unit Owners who collectively hold at least the necessary percentage of undivided ownership interests.

#### ARTICLE XIX MISCELLANEOUS

- 19.1 **Service of Process.** The registered agent of the Association as shown on the records of the State of Utah is the Person upon whom process may be served as provided for in the Act. Service of process for the purposes provided in the Act may also be made upon the president of the Association. The Management Committee may at any time designate a new or different Person or agency for such purposes by filing an amendment to this Restated Declaration limited to the sole purpose of making such change, and such amendment need only be signed and acknowledged by the then president of the Association.
- 19.2 **Duty of Owner to Pay Taxes on Unit Owned.** It is understood that under the Act each Unit (and its percentage of interest in the Common Areas) in the Project is subject to separate assessment and taxation by each taxing authority and any special districts for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the Project as such. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against him or his Unit.
- 19.3 **Covenants to Run with Land; Compliance; Enforcement.** This Restated Declaration and all the provisions hereof shall constitute covenants to run with the land, or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner, Resident, or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, the provisions of this Restated Declaration, the Articles of Incorporation of Bountiful Gardens HOA, the Bylaws, and of any rules, regulations, agreements, instruments, determinations and decisions contemplated by this Restated Declaration, as the same may lawfully be amended from time to time. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Restated Declaration, the above-referenced Articles of Incorporation, the Bylaws, the Act, and the provisions of any

rules, regulations, instruments, determinations and decisions contemplated by this Restated Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

- 19.4 **Owner's Obligations.** All obligations of an Owner under and by virtue of the provisions contained in this Restated Declaration shall continue, but the Owner of a Unit shall have no obligation for expenses or other obligations accruing after he conveys such Unit.
- 19.5 **Registration of Mailing Address.** Each Owner who wishes to receive any notices required to be sent by the Association at an address other than the address of his Unit shall register such address with the Association. All notices or demands intended to be served upon any Owner may be sent by first class U.S. Mail, postage prepaid, addressed to the name of the Owner at such registered mailing address, or, if no address has been registered, to the Unit of such Owner. Any notice or demand referred to in this Restated Declaration shall be deemed given when deposited in the U.S. Mail in the form provided for in this Paragraph. Such notice shall also be deemed to have been properly furnished if sent via electronic means as long as the Association follows the required procedures outlined in the Bylaws regarding notice by electronic means.
- 19.6 **Inspection of Books.** Any Owner may at any reasonable time, upon appointment, and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association.
- 19.7 **Indemnification of Committee Members.** Each member of the Committee shall be indemnified and held harmless by the Owners against all cost, expenses, and liabilities whatsoever which result from his good-faith activities as a member of the Committee, including, without limitation, attorney's fees reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee.
- 19.8 **Enforcement, Attorney Fees and Cost.** This Restated Declaration and any Association rules may be enforced by any available remedy at law or equity and, in addition to any remedy set forth herein. In the event enforcement action is instigated, the Association or Management Committee, as the case may be, shall recover its costs and reasonable attorney fees incurred from the party in violation, whether or not suit is filed or judgment is rendered thereon.
- 19.9 **Number and Gender.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- 19.10 **Severability.** If any of the provisions 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 this Restated Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

- 19.11 **Topical Headings.** The headings appearing at the beginning of the sections, paragraphs and subparagraphs of this Restated Declaration are solely for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of this Restated Declaration or any section, paragraph or provision hereof.
- 19.12 **Effective Date.** This Restated Declaration shall take effect upon recording.
- 19.13 **Interpretation.** This Restated Declaration shall be liberally construed to affect its purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision, restriction, covenant, or condition in this Restated Declaration or in any supplemental or amended declaration shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants, or conditions. To the extent the provisions of the Act and all other applicable provisions of law are consistent with this Restated Declaration, such provisions shall supplement its terms and are incorporated herein.

[Signatures on next Page]

**CERTIFICATION**

As evidenced by the Approval Form on the next page, it is hereby certified that owners holding more than fifty-one percent (51%) of the voting interests in Bountiful Gardens Condominiums have voted to approve this Restated Declaration.

IN WITNESS WHEREOF, this 7 day of May, ~~2018~~ <sup>2019</sup>.

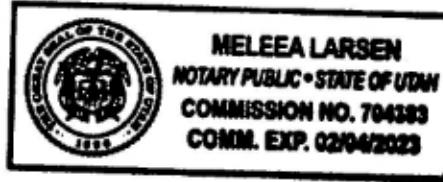
BOUNTIFUL GARDENS HOA, INC.

BOUNTIFUL GARDENS HOA, INC.

By Richard A. Smith  
President

By Gwen Brandt  
Secretary

STATE OF UTAH )  
                          ) :ss.  
COUNTY OF DAVIS



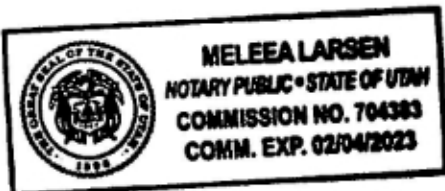
On this 7 day of May, ~~2018~~ <sup>2019</sup>, personally appeared before me Richard Smith who, being by me duly sworn, did say that (s)he is President of the Bountiful Gardens HOA, Inc., a Utah nonprofit corporation, and that the within and foregoing instrument was signed in behalf of said Association and (s)he duly acknowledged to me (s)he executed the same.

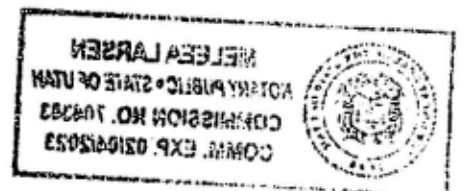
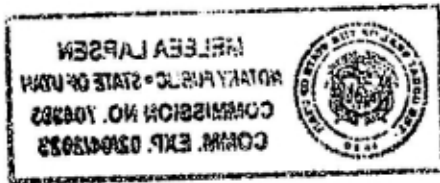
Meleea Larsen  
Notary Public

STATE OF UTAH )  
                          ) :ss.  
COUNTY OF DAVIS

On this 7 day of May, ~~2018~~ <sup>2019</sup>, personally appeared before me Gwen Brandt who, being by me duly sworn, did say that (s)he is Secretary of the Bountiful Gardens HOA, Inc., a Utah nonprofit corporation, and that the within and foregoing instrument was signed in behalf of said Association and (s)he duly acknowledged to me (s)he executed the same.

Meleea Larsen  
Notary Public







### Approval Form Bountiful Gardens Condominiums

The undersigned Unit Owners hereby acknowledge that they approve, and vote to adopt, this Amended and Restated Declaration of Condominium for Bountiful Gardens Condominiums.

Unit #	Print Name	Signature
3D	Rosemary Hammond	Rosemary Hammond
2	<del>B</del>	
3		
4	AUDREY LISTON	Audrey Liston
5		
6		
7		
8	Ewice E. Rimmann	Ewice E. Rimmann
9	Jimmy Lindbergh	Jimmy S. Lindbergh
10	KATHLEEN BIRD	Kathleen L. Bird
11	Lois J. Williams	Lois J. Williams
12	IVA LEE EGAN	Iva Lee Egan
13	Carolina SINGLER	C. Singler
14		
15		
16	SUZANNE FOWLER	Suzanne Fowler
17	Richard B. Bishop	Richard B. Bishop
18	Candyn Christensen	Candyn Christensen
19	Koss Baldwin	Koss Baldwin

## Approval Form Bountiful Gardens Condominiums

The undersigned Unit Owners hereby acknowledge that they approve, and vote to adopt, this Amended and Restated Declaration of Condominium for Bountiful Gardens Condominiums.

Unit #	Print Name	Signature
20	<u>Rodney Brown</u>	<u>[Signature]</u>
21	<u>Rodney Gray</u>	<u>[Signature]</u>
22	_____	_____
23	<u>Beatrice TRUEBA</u>	<u>Beatrice Trueba</u>
24	_____	_____
25	<u>BERNICE ANDERSON</u>	<u>Bernice Anderson</u>
26	<u>Pauline S. TRUMP</u>	<u>Pauline S. Trump</u>
27	_____	_____
28	<u>SANDY Coletti</u>	<u>Sandy Coletti</u>
29	<u>DeEtte Kercher</u>	<u>DeEtte Kercher</u>
30	_____	_____
31	_____	_____
32	_____	_____
33	<u>Jane Sherman</u>	<u>Jane J. Sherman</u>
34	<u>Richard Smith</u>	<u>[Signature]</u>
35	<u>Sidney Larsen</u>	<u>Sidney F. Larsen</u>
36	<u>Nannette Bernard</u>	<u>Nannette Bernard</u>
37	_____	_____
38	<u>Trudy Boyer</u>	<u>Trudy Boyer</u>

## Approval Form Bountiful Gardens Condominiums

The undersigned Unit Owners hereby acknowledge that they approve, and vote to adopt, this Amended and Restated Declaration of Condominium for Bountiful Gardens Condominiums.

Unit #	Print Name	Signature
39	<u>Gwen Brandt</u>	<u>Gwen Brandt</u>
40	<u>Ken &amp; Rhonda Murray</u>	<u>Rhonda Murray</u>
41	<u>RICHARD LINKER</u>	<u>Richard Linker</u>
42	_____	_____
43	_____	_____
44	_____	_____
45	<u>Shirleen Richardson</u>	<u>Shirleen Richardson</u>
46	<u>Iris Pettit</u>	<u>Iris Pettit</u>
47	<u><del>St</del> June Hickman</u>	<u>June Hickman</u>
48	<u>BARBARA HIGHT</u>	<u>Barbara Hight</u>
49	<u>Linda C Raccuia</u>	<u>Linda C Raccuia</u>
50	<u>Ozzy &amp; Angie de Moriva</u>	<u>Angie de Moriva</u>
51	<u>Jolynn Pitter</u>	<u>Jolynn Pitter</u>
52	_____	_____

## Approval Form

### Bountiful Gardens Condominiums

The undersigned Unit Owners hereby acknowledge that they approve, and vote to adopt, this Amended and Restated Declaration of Condominium for Bountiful Gardens Condominiums.

Unit #	Print Name	Signature
39	_____	_____
40	_____	_____
41	_____	_____
42	_____	_____
43	_____	_____
44	_____	_____
45	_____	_____
46	_____	_____
47	_____	_____
48	_____	_____
49	_____	_____
50	_____	_____
51	_____	_____
52	_____	_____

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

All of Apartments 1 through 4, Unit A, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.

[03-063-0001 to 03-063-0004]

All of Apartments 5 through 8, Unit B, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.

[03-063-0005 to 03-063-0008]

All of Apartments 9 through 12, Unit C, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.

[03-063-0009 to 03-063-0012]

All of Apartments 13 through 16, Unit D, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.

[03-063-0013 to 03-063-0016]

All of Apartments 17 through 20, Unit E, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.

[03-063-0017 to 03-063-0020]

All of Apartments 21 through 24, Unit F, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.

[03-063-0021 to 03-063-0024]

All of Apartments 25 through 28, Unit G, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.

[03-063-0025 to 03-063-0028]

All of Apartments 29 through 32, Unit H, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.

[03-063-0029 to 03-063-0032]

All of Apartments 33 through 36, Unit I, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.

[03-063-0033 to 03-063-0036]

All of Apartments 37 through 40, Unit J, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.  
[03-063-0037 to 03-063-0040]

All of Apartments 41 through 42, Unit K, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.  
[03-063-0041 to 03-063-0042]

All of Apt 43, Unit K, Bountiful Gardens Apartments Homes. Also, all of Apt 44, Bountiful Gardens Apartments Homes.  
[03-063-0054]

All of Apartments 45 through 48, Unit L, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.  
[03-063-0045 to 03-063-0048]

All of Apartments 49 through 52, Unit M, Bountiful Gardens Apartments Homes, Bountiful City, Davis County, Utah.  
[03-063-0049 to 03-063-0052]

# **EXHIBIT "B"**

## **BYLAWS**

**BYLAWS**  
**OF THE**  
**BOUNTIFUL GARDENS HOA**

**ARTICLE I**  
**IDENTITY**

- 1.1 The name of the corporation is "Bountiful Gardens HOA," hereinafter the "Association."
- 1.2 The principle office of the Association shall be at that address listed on with the Utah State Department of Commerce, but meetings of the Members and Management Committee may be held at such times and places within the State of Utah as the Management Committee may designate.

**ARTICLE II**  
**DEFINITIONS**

- 2.1 Except as otherwise specifically provided herein, all terms in these Bylaws shall have meanings as defined in that certain instrument entitled, "Amended and Restated Declaration of Condominium for Bountiful Gardens Condominiums" applicable to the Project and recorded in the Office of the County Recorder of Davis County, State of Utah, hereinafter the "Restated Declaration." As used herein, "Member" shall mean and refer to those persons entitled to membership in the Association in accordance with the Restated Declaration and the Articles of Incorporation of the Association. Where the context so requires, the terms "Member" and "Unit Owner" are used interchangeably herein. The terms "Member" and "Unit Owner" shall not refer to any mortgagee or lien holder, unless such person has acquired title for other than security purposes.

**ARTICLE III**  
**APPLICATION**

- 3.1 All Unit Owners, occupants, guests, or others who might use the facilities of this Condominium Project in any manner are subject to the provisions set forth in these Bylaws. The mere acquisition or use of any of the Units or use of Common Areas will signify that these Bylaws are accepted, ratified, and will be observed by such persons.

**ARTICLE IV**  
**MEETINGS OF MEMBERS**

- 4.1 **Place of Meetings.** Meetings of Members shall be held at such place within the State of Utah as the Management Committee may specify in the notice, except as herein otherwise specified.



- 4.2 **Annual Meeting of Members.** The annual meeting of the Members shall be held annually on the third Tuesday in April, or at such time and place as the Management Committee shall specify, however, the Management Committee may by resolution fix the date of the annual meeting on such other date and at such place as it may deem appropriate or desirable.
- 4.3 **Special Meetings of Members.** Special meetings may be called at any time by written notice served by the Management Committee, or by Members having forty percent (40%) of the total votes of the membership.
- 4.4 **Notices.** Written or electronic notice of each annual or special meeting, as well as any other notice required or permitted to be delivered as provided in these Bylaws, shall be given by or at the direction of the Management Committee, or, in the case of a special meeting, by Members having forty percent (40%) of the total votes of the membership, by either delivering the same personally or by mail. If delivery is by mail, it shall be deemed to have been delivered 48 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Member at the address given by such person to the Management Committee for the purpose of service of such notice or to the Unit of such person if no address has been given. Such address may be changed by Members from time to time by notice in writing to the Management Committee. Such notice shall specify the place, day, and hour of the meeting and, in the case of special meetings, the purpose of the meeting, and shall be delivered at least fifteen (15) days but less than thirty (30) days before each annual meeting and at least seven (7) days but less than fourteen (14) days before each special meeting to each Member entitled to vote thereat.
- 4.5 **Quorum.** At any meeting of the Owners, the presence in person or by proxy of Members holding more than thirty percent (30%) in the aggregate in interest of the undivided ownership of Common Areas shall constitute a quorum for any and all purposes, except where by express provision a greater vote is required, in which event a quorum shall be the number required for such vote. In the absence of a quorum, those Members present, though less than a quorum, may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall be in attendance. At any such reconvened meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.
- 4.6 **Proxies.** At all meetings of the Members, each Member may vote in person or by proxy. Each proxy shall be revocable and shall cease automatically upon the conveyance of the affected Member's Unit. All proxies shall be in writing shall be delivered to the Secretary of the Association. The Secretary shall enter a record of such proxies in the minutes of the meeting.
- 4.7 **Voting.** When a quorum, as provided herein above or in the Condominium Ownership Act, is present at any meeting, the vote of Members representing more than fifty percent (50%) of the undivided ownership of Common Areas, present in person or represented by proxy,

shall decide any question brought before such meeting, including the election of the Management Committee, unless the question is one upon which, by express provision of the statutes of the State of Utah, the Restated Declaration, the Articles of Incorporation or of these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

- 4.8 **Record Members.** At annual meetings of the Members, only such persons shall be entitled to vote in person or by proxy as appear as Owners or contract purchasers in the records of the County Recorder for Davis County, State of Utah, on the thirtieth (30th) day before such annual meeting. The Management Committee may, by resolution, fix a date in advance of a special meeting of the Members upon which date a Member must appear as an owner or contract purchaser in the records of the County Recorder for Davis County, State of Utah, in order to be entitled to vote at such special meeting; provided, however, that said date shall in no event be fixed at fewer than five (5) nor more than thirty (30) days prior to the date for such special meeting.
- 4.9 **Waivers of Notice.** Any Member may at any time waive any notice required by these Bylaws, or by statute, or otherwise. The presence of a Member in person or by proxy at any meeting of the members shall be deemed to be such a waiver.

## ARTICLE V MANAGEMENT COMMITTEE

- 5.1 **Purpose and Powers.** The business, property and affairs of the Association shall be managed and governed by the Management Committee pursuant to Article VI of the Restated Declaration provided, however, that the Management Committee may enter into such management agreement or agreements with third persons as it may deem advisable.
- 5.2 **Regular Meetings.** A regular annual meeting of the Management Committee shall be held immediately after the adjournment of each annual meeting of the Members. Regular meetings, other than the annual meeting, shall or may be held at regular intervals at such places and at such times as the President of the Management Committee may from time to time designate.
- 5.3 **Special Meetings.** Special meetings of the Management Committee shall be held whenever called by the President, the Vice President, or by any two or more members thereof, on three business days' notice to each member given by mail, in person, electronically or by telephone, which notice shall state the time, place, and purpose of the meeting. By unanimous consent of the Management Committee, special meetings may be held without call or notice at any time or place.
- 5.4 **Quorum.** A majority of the members of the Management Committee then in office shall constitute a quorum.
- 5.5 **Voting.** When a quorum, as provided herein or in the Condominium Ownership Act is present at any meeting of the Management Committee, the vote of a majority of the

Committee members present shall decide any question of business brought before such meeting unless a different vote is required by an express provision of the Act, the Restated Declaration, or the Bylaws, in which case such express provision shall govern and control the decision of such question.

- 5.6 **Action without Meeting.** The members of the Management Committee shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all Committee members. Any action so approved shall have the same effect as though taken at a duly called meeting of the Management Committee.
- 5.7 **Compensation.** Members of the Management Committee, as such, shall not receive any stated salary or compensation: provided that nothing herein contained shall be construed to preclude any member thereof from serving the Association in any other capacity and receiving compensation therefore.
- 5.8 **Waiver of Notice.** Before or at any meeting of the Management Committee, any member thereof may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Committee member at any Management Committee meeting shall constitute a waiver by him of notice of the time and place of the meeting.
- 5.9 **Adjournment.** The Management Committee may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided, however, that no such meeting may be adjourned for longer than thirty (30) days.

## ARTICLE VI OFFICERS

- 6.1 **Designation and Election.** The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by and from the Management Committee. Except as otherwise stated in the Restated Declaration, such election shall regularly take place at the first meeting of the Management Committee immediately following the annual meeting of the Unit Owners; provided, however, that elections of officers may be held at any other meeting of the Management Committee.
- 6.2 **Other Officers.** The Management Committee may elect such other officers, in addition to the officers hereinabove expressly named, as it shall deem necessary, who shall have authority to perform such duties as may be prescribed from time to time by the Management Committee.
- 6.3 **Term.** The officers of this Association shall be elected annually by the Management Committee and each shall hold office for two (2) years, unless he shall sooner resign, or shall be removed, or shall otherwise be disqualified to serve.

- 6.4 **Removal of Officers and Agents.** All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of a majority of the then members of the Management Committee.
- 6.5 **Vacancies.** A vacancy in any office may be filled by appointment by the Management Committee. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.
- 6.6 **Duties.** The duties of the officers are as follows:
- a. **President.** The President shall be the chief executive of the Association and shall exercise general supervision over its property and affairs. He shall sign on behalf of the Association all instruments and contracts of material importance to its business and shall do and perform all acts and things which the Management Committee may require of him. He shall preside at all meetings of the Members and of the Management Committee. He shall have all of the general powers or duties which are normally vested in the office of the president of a corporation.
  - b. **Vice President.** The Vice President shall act in the place and stead of the President and perform his duties in the event of his absence or his inability or refusal to act. If neither the President nor the Vice President is able to act the Management Committee shall appoint some other member thereof to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be prescribed by the Management Committee.
  - c. **Secretary.** The Secretary shall keep the minutes of all meetings of the Management Committee and of the Members; she shall have charge of such books and papers as the Management Committee may direct; and he shall in general perform all the duties ordinarily incident to the office of Secretary, and such other duties as the Management Committee may require of her.
  - d. **Treasurer.** The Treasurer shall have the responsibility for the funds of the Association. He shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association; he shall be responsible for the deposit of all monies and all other valuable effects in the name, and to the credit of, the Association in such depositories as may, from time to time, be designated by Management Committee; he shall report the state of the finances of the Association at each annual meeting of the Members; and he shall perform such other duties as the Management Committee may require of him. Any of the Treasurer's responsibilities as defined herein may be delegated to a manager or bookkeeper hired by the Association.
  - e. **Other Officers.** All other officers of the Association shall have such authority and perform such duties as the Management Committee may from time to time determine.

- 6.7 **Compensation.** No compensation shall be paid to any officer for his services and no remuneration shall be paid to an officer for services performed by him for the Management Committee in any other capacity unless a resolution authorizing such remuneration shall have been unanimously adopted by the Management Committee before the services are undertaken. However, an officer may be reimbursed for his actual expenses incurred in the performance of his duties as an officer.

## ARTICLE VII RECORDS

- 7.1 **Books and Records.** The Association shall keep at its principal place of business the following books and records and any Member of record, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, the same and to make extracts there from:
- a. Its minutes of meetings of the Management Committee and any committees thereof.
  - b. Its minutes of meetings of the Members.
  - c. Copies of its Articles of Incorporation and Bylaws as originally executed and adopted together with all subsequent amendments there to.
  - d. All books and records of account shall be kept at the corporation's principal place of business or as determined by the Management Committee.
- 7.2 **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 Management Committee 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 Management Committee may destroy the documents.
- 7.3 **Principle Place of Business.** The principle office of the Association shall be at that address listed on with the Utah State Department of Commerce, but meetings of the Members and Management Committee may be held at such times and places within the State of Utah as the Management Committee may designate.

## ARTICLE VIII ELECTRONIC NOTICE

- 8.1 **Notification by Website and Email.** The Association desires to communicate electronically with Members to the fullest extent possible. Any notice sent to Members 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 or other address

to which notice was sent. A member may, by written demand, require the Association to provide notice to the Unit Owner by mail.

**8.2 Notices.** Any notice permitted or required to be delivered by the Management Committee 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 Owner at the address given by such person to the Management Committee for the purpose of service of such notice or to the Unit of such person if no address has been given. Such addresses may be changed by Owners from time to time by notice in writing to the Management Committee.
- 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 but not limited to text message, Facebook, Twitter, 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 well-known electronic forms) and the Association shall send notification of all Association meetings, proposals, documents, amendments 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 Unit 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 Unit, or by securely attaching a copy of the notice to the front entry door of the Owner's Unit.

**8.3 Waiver.** Members who (a) request electronic notice, and (b) confirm they have received electronic notice from the Association of any Association business or meeting, are deemed to have waived any defense to or claim against the Association that the Association's electronic notice was not adequate or proper, and may not thereafter challenge or assert that the notice they received was not adequate, proper, or in compliance with the Restated Declaration, the Association's Bylaws, or Utah law.

## **ARTICLE IX COMMITTEES**

**9.1** The Management Committee may, by resolution, appoint such committees as may be deemed appropriate in carrying out its duties, responsibilities, and powers.

**ARTICLE X  
AMENDMENT OF BYLAWS**

- 10.1 These Bylaws may be altered, amended, or repealed at any duly constituted meeting of the Members called for that purpose by the affirmative vote of at least fifty-one percent (51%) of the ownership in the Common Areas present at such meeting in person or by proxy.

# **EXHIBIT “B-1”**

## **RECORD RETENTION SCHEDULE**



**BOUNTIFUL GARDENS HOA  
RECORD RETENTION POLICY**

This record retention schedule 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 Management Committee 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 Management Committee may destroy the documents.

<b>Description of Record</b>	<b>Retention Period</b>
Articles of Incorporation	Permanent
The Restated Declaration ( and any amendments)	Permanent
Corporate or Association Bylaws	Permanent
Association Plat Maps	Permanent
Resolutions adopted by the Management Committee 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 of the Management Committee	Permanent
Minutes of all annual and special meetings of members	Permanent
Record of all actions taken by the members or Management Committee without a meeting	Permanent
Record of all waivers of notices of meetings of members and of the Management Committee or any committee of the Management Committee	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 6 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.	3 years

# **EXHIBIT "C"**

## **FINE SCHEDULE**

AMOUNT OF FINE\*

1ST Offense	2ND Offense within one year	3RD or more Offense within one year	RULE (the following activities are prohibited)
\$50	\$75	\$100	<ul style="list-style-type: none"> <li>· parking in restricted areas such as fire lanes</li> <li>· parking in areas other than marked parking stalls</li> <li>· parking in another's reserved parking stall</li> <li>· parking in front of garbage dumpster</li> <li>· parking in areas marked with "no parking" signs</li> <li>· violation of any parking rule contained in the declaration, bylaws, or condominium rules</li> <li>· parking more than two (2) cars per unit on condominium property without authorization</li> <li>· parking unregistered or inoperable vehicles, boats or trailers in the common area for more than 10 days</li> <li>· parking on or across sidewalks</li> <li>· driving faster than the permitted speed (10 mph)</li> <li>· performing service, maintenance or mechanical work on any vehicle in the common area of parking area(including motorcycles &amp; ATV's)</li> <li>· leaving trash, garbage, or clutter on the unit's patio, atrium, deck or doorstep, or otherwise maintaining the patio, atrium, deck or doorstep in an unsightly, unclean, or unsanitary condition</li> <li>· obstructing the common area in such a manner as to restrict ingress or egress from the units</li> <li>· misuse or damage to the common area by attaching satellite dishes, awnings, signs, lights, or any other item to the common area in violation of the Association's satellite policy or without the written permission of the Management Committee</li> <li>· painting or decorating any common area without written permission of the Management Committee</li> <li>· causing damage to any common area (roads, lawn, parking area, sidewalk, sprinkler system, flowers or shrubs)</li> <li>· leaving personal belonging in the common area for more than 24 hours (bicycles, scooters, toys, equipment)</li> <li>· creating noise within a unit or deck that can be heard in another unit 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</li> </ul>

\$50	\$75	\$100	<ul style="list-style-type: none"><li>· creating noise in the common area or limited common area that can be heard in a unit 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</li><li>· maintaining pets in a unit in violation of the condominium bylaws, declaration or rules and regulations</li><li>· failing to clean up after pets that have made a mess in the common area</li><li>· allowing pets in the common area when not on a leash</li><li>· bringing a pet in unit that can be heard in another unit 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</li><li>· performing any construction outside of a unit without written authorization from the Management Committee</li><li>· using abusive or foul language</li><li>· operating a business in a unit without a business license or in violation of the municipal ordinances, the condominium Bylaws, Restated Declaration, or rules and regulations</li><li>· the violation of any provision of the Association's governing documents, which documents include the Amended and Restated Declaration of Condominium for Bountiful Gardens Condominiums ("Restated Declaration"), any amendments to the Restated Declaration, the Association Bylaws, and any rules adopted by the Management Committee or the Association</li><li>· Using barbecue or cooking/grilling devices on, or closer than 10 feet to, any fence, building or other structure.</li><li>· Placing furniture, carpets, construction debris, or similar oversized articles in the dumpsters.</li><li>· Violating Article V of the Restated Declaration by permitting a guest under the age of 55 to reside in a Unit for more than 60 days in any one-year period.</li></ul>
------	------	-------	---

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

# **EXHIBIT "D"**

# **MAINTENANCE CHART**

### BUILDING & PROPERTY MAINTENANCE

The following chart defines the division of responsibility for maintenance and repair of property in the project/subdivision between the Association and Owner.

	EXTERIOR	HOA	OWNER
1	Maintenance, replace, repair of roofs (including: membranes, sub-roofing, girders, beams & support structures).	X	
2	Maintenance, replace and repair of Exterior walls (including: siding, stucco, shingles, brickwork, columns & studs).	X	
3	Maintenance, replace and repair of front steps and sidewalk	X	
4	Maintenance, replace and repair of concrete footings, foundations and entrees.	X	
5	Maintenance, replace and repair of water spigot by back doors.		X
6	Any damage caused to a Unit by a resident's negligence, such as failing to disconnect a hose from a spigot, is the liability of the Unit Owner on which the spigot is located.		X
7	Maintenance, replace and repair of Unit entrances (including: frames, thresholds, doors, door knobs, locks, hinges & doorbells)		X
9	Windows, sliding glass doors, screens and frames		X
10	Replacement and maintenance of concrete patios installed at the time the Project was constructed	X	
11	Maintenance, repair and replacement of the original, wooden fences that were installed at the time the Units were constructed.		X
12	Maintenance, replacement and repair of any fence installed by an Owner.		X
13	Maintenance, replacement and repair of rain gutters and down spouts.	X	
14	Replacement, maintenance and repair of exterior doors, hinges, frames, thresholds, locks, doorbells and chimes.		X
15	Replacement, maintenance and repair of windows, sliding glass doors, screens and frames.		X
16	Replacement, maintenance and repair of all light bulbs located in exterior light fixtures that are attached to the exterior of a Unit.		X
17	Utility lines (Water, power, gas & telephone) servicing multiple units.	X	
18	Utility lines (Water, power, gas & telephone) servicing individual units.		X
19	Electrical system from the Unit's breaker panel and to all outlets including switches and light fixtures located in the Unit.		X
20	Plumbing fixtures such as faucets, showers, sinks, basins, toilets & tubs		X

21	Replacement of front entry railings originally installed by the Association and located outside each Unit		X
22	Maintenance, replace and repair of any television, satellite, cable, internet and any other communications equipment		X
23	Maintenance, replace and repair of Air-Conditioning systems (Complete system inside and outside including electrical system from the meter base to the air conditioner unit, including conduit and all wiring)		X
24	Maintenance, replace and repair of all Unit owner improvements		X
25	Maintenance and replacement of water, gas and electricity meters	X	
26	Maintenance, replace and repair of all skylight's that are part of a Unit	X	
27	Maintenance, replace and repair any regular, membrane roof of a Unit that extends over an atrium. However, the Association shall not be responsible for any roofs installed by an Owner that covers an atrium.	X	
28	Maintenance, replace or repair any roofs made of metal, plexiglass or a similar material that are installed over an atrium.		X
29	Maintenance, replace or repair of any non-loadbearing walls that surround a patio or an atrium that were not part of the Unit's initial construction.		X

	INTERIOR	HOA	OWNER
30	Floor structure (including: concrete, beams & sub-flooring)	X	
31	Floor covering (including: wood flooring & carpeting, tile)		X
32	Wall studs & beams forming the exterior wall structure surrounding each unit as well as all load-bearing walls located within each unit to the interior surface of each unit (including sheetrock up to but not including the unfinished surface).	X	
33	All interior ceilings, non-load-bearing walls (located within each unit) including wall studs, sheetrock & decorative finishes.		X
34	All interior painting, decorations, cabinets 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, and intercom, telephone, and computer networks. Water pipes, drainage pipes and sewer lines that serve only one Unit are the responsibility of the Owner to the point they join a common pipe.		X
35	Maintenance and repair of water heaters		X
36	Replacement of water heaters		X

37	Maintenance, cleaning and repair of venting serving only one unit, air conditioning units and fireplaces.		X
38	Maintenance, repair and replacement of the gas and electrical system from the gas meter to the gas appliances or from the electric meter to the breaker panel and to all outlets including switches and light fixtures.		X
39	Maintenance, repair and replacement of plumbing fixtures such as sinks, basins, toilets and all interior pipes and valves.		X
40	Repair of cracks or other damage to interior walls, floors or ceilings caused by normal Unit settling.		X
41	Repairs of damage resulting from static water or seepage of water from any underground source, including water and sprinkler system failures.	X	
42	Repairs of damage resulting from surface water.		X
43	Interior damage resulting from failures in non-shared utility lines, unless covered by insurance.		X

	GROUNDS	HOA	OWNER
44	Lawn, flower shrubs and trees in the Common Areas.	X	
45	Planting, weeding and maintenance of garden beds located directly in front or an Owner's Unit		X
46	Lawn watering system.	X	
47	Snow removal from access road.	X	
48	Snow removal from exterior porches, steps and driveways.	X	
49	Snow removal from Limited Common Areas (including any patios or atriums)		X
50	Roadways, parking lots, curbs and gutters, sidewalks and front steps.	X	
51	Carport Structures	X	
52	Watering system for Limited Common Areas	X	

	OTHER	HOA	OWNER
53	Garbage collection.	X	
54	Maintenance and repair of water system from the city water meter to the entrance to the exterior wall of each Unit.	X	