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**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE
UNION GARDENS PLANNED UNIT DEVELOPMENT**

UNION GARDENS MANAGEMENT, L.L.C.

Declarant

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**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR THE
UNION GARDENS PLANNED UNIT DEVELOPMENT**

THIS DECLARATION is made this 20 day of December, 2004, by **UNION GARDENS MANAGEMENT, L.L.C.**, a Utah limited liability company ("Declarant").

OBJECTIVES

A. Declarant owns or controls two acres more or less within unincorporated Salt Lake County, Utah located at 7334 and 7342 South 700 East. Declarant proposes to develop this property as a planned unit development to be known as the "Union Gardens Planned Unit Development."

B. Declarant intends to develop the Union Gardens Planned Unit Development as a Twin Home residential neighborhood ("Union Gardens") more particularly described in Section 2.1 below.

C. The purpose of this Declaration is to provide for standards of use and ownership throughout Union Gardens.

D. By adoption of the Declaration, Declarant is not committing itself to take any action for which definite provision is not made below. One who acquires property in Union Gardens will have the advantage of any further development of Union Gardens, but shall not have any legal right to insist that there be development except as provided in this instrument or in the instruments which hereafter may be recorded annexing areas to Union Gardens and voluntarily subjecting areas to the Declaration.

NOW, THEREFORE, Declarant hereby declares that the property described in Section 2.1 below shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

- 1.1 **“Additional Property”** means any land, whether or not owned by Declarant, which is made subject to the Declaration as provided in Section 2.3 below.
- 1.2 **“Association”** means the Union Gardens Home Owners Association, a Utah non-profit corporation, whose primary duty shall be to maintain the Common Improvements with Union Gardens.
- 1.3 **“Board”** means the Governing Board of Trustees of the Association as defined in the Articles of Incorporation and Bylaws of the Association.
- 1.4 **“Building”** means any kind of Twin Home, recreational structure or other structure related thereto built, constructed, existing, planned or in the process of being built or constructed on the Property.
- 1.5 **“Common Improvements”** means the common areas designated and reserved on the Plat and the related improvements within Union Gardens, including but not limited to entrance markers, common fences, open space, and recreation amenities provided for common use, together with all easements appurtenant thereto intended for the common use, benefit, and enjoyment of all owners in the development.
- 1.6 **“Declarant”** means Union Gardens Management, L.L.C., a Utah limited liability company, and its successors and assigns if such successor or assignee should acquire Declarant’s interest in the remainder of the proposed project site, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant’s rights under this Declaration.
- 1.7 **“Improvement”** means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter, landscaping or other product of construction efforts on or in respect to the Property.
- 1.8 **“Living Unit”** means a portion of a Twin Home located upon a Lot within the Property and designated for separate residential occupancy, whether owner occupied or rented by the Owner to its tenants.
- 1.9 **“Lot”** means one of the separately numbered and individually described plots of land with Union Gardens which is intended to be (i) owned individually rather than by an association of owners or in common by owners of different Lots, and (ii) used as the site of an owner-occupied or tenant-occupied Twin Home.

1.10 **“Managing Agent”** means any person or entity appointed as the manager or managing agent by the Association.

1.11 **“Member”** means an Owner of a Lot and as a result a member of the Association.

1.12 **“Mortgage”** means a mortgage or a trust deed; **“mortgagee”** means a mortgagee or a beneficiary of a trust deed; and **“mortgagor”** means a mortgagor or a grantor of a trust deed.

1.13 **“Owner”** means the person or persons, including Declarant, owning any Lot, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.14 **“Plat”** means the planned unit development plat being recorded concurrently with this Declaration entitled UNION GARDENS PLANNED UNIT DEVELOPMENT, filed of record in the office of the County Recorder of Salt Lake County, Utah, on JUNE 14, 2004, in Book 5174 Page 9000, as Entry Number 9088639 together with all subsequently recorded Plats which are designated as any phases or additions to the Union Gardens Planned Unit Development.

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1.15 **“Public Areas”** means areas dedicated to the public or areas established for public use by legal description in the Declaration or in any declaration annexing such property to Union Gardens.

1.16 **“Sold”** means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.

1.17 **“The Property”** means Union Gardens.

1.18 **“This Declaration”** means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules of regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including the provisions of any supplemental declaration annexing property to Union Gardens.

1.19 **“Twin Homes”** means homes designed and intended for use by two separate living units sharing a common wall, together with all improvements located on the Lot concerned with are used in conjunction with such residence.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Union Gardens Planned Unit Development.** Declarant hereby declares that all of the real property described in Exhibit "A" attached hereto and incorporated herein is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration. All of the land within Union Gardens shall be classified as Twin Home residential Lots, Public Areas or common areas.

2.2 **Annexation of Additional Property.** Declarant may from time to time and in its sole discretion annex to Union Gardens as Additional Property any real property now or hereafter acquired by it. The annexation of such Additional Property shall be accomplished as follows:

(a) **Supplemental Declaration.** Declarant shall record a Supplemental Declaration (the "Supplemental Declaration") which shall be executed by Declarant and shall, among other things, describe the real property to be annexed, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such Additional Property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) **Incorporation into Union Gardens.** The Additional Property included in any such Supplemental Declaration shall thereby become a part of Union Gardens and subject to this Declaration.

(c) **Priority of Supplemental Declaration.** Notwithstanding any provision apparently to the contrary, a Supplemental Declaration with respect to any Additional Property may (i) establish such limitations, uses, restrictions, covenants and conditions with respect to such Additional Property; and (ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property.

(d) **No Limits on Annexation.** There is no limitation on the number of Lots or Living Units which Declarant may create or annex to Union Gardens, except as may be established by applicable ordinances of Salt Lake County. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by Salt Lake County.

(e) **Future Improvements.** Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements.

2.3 **Withdrawal of Property.** Declarant may withdraw property from Union Gardens only by a duly adopted amendment to this Declaration evidencing the consent of the owner of such property. Such withdrawal shall be by a Supplemental Declaration executed by Declarant and recorded in the Office of the County Recorder of Salt Lake County, Utah.

2.4 **Access to Other Subdivisions.** If required by Salt Lake County or if voluntarily permitted by Declarant or the Association, any residential subdivisions adjacent to Union Gardens may be given the right to use the interior Union Gardens access road for ingress and egress to such residential subdivision provided that (i) any cost of construction to provide such access shall be borne by the adjacent residential subdivision, (ii) any of the designated guest parking stalls located in Union Gardens and lost due to such grant of access shall be replaced at the sole cost of the adjacent residential subdivision on property of the adjacent residential subdivision within one hundred (100) feet of the Union Gardens access road, and (iii) the adjacent residential subdivision shall make a reasonable, financial contribution to the Association to pay for the increased use of the Union Gardens access road for so long as the Union Gardens access road is a private, non-dedicated street.

ARTICLE 3

PROPERTY RIGHTS IN LOTS

3.1 **Use and Occupancy.** The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and the Owner shall comply with the restrictions contained in Article 7 below, and all other provisions of this Declaration and the provisions of any supplement of the Declaration.

3.2 **Easements.** The following easements shall be reserved and/or granted in, upon, across or under the Property.

(a) **Utilities and Drainage.** Easements for installation and maintenance of utilities and draining facilities and all other easements are reserved as shown on the Plat. Structures of any type are prohibited within these easements. Plants or other materials, which will not damage utilities or distract established drainage routes may be placed or permitted to remain within such easements.

(b) **Governmental Entities.** An easement is hereby granted to Salt Lake County and any other governmental entity or quasi governmental body having jurisdiction over the Property to access and to have the right of ingress and egress over and across open spaces and common areas within the Property for purposes of providing police, fire protection, ambulance and other similar services.

(c) **Right of Entry.** Declarant and any authorized representative or agent of Declarant may at any reasonable time during construction of a Twin Home or building, and from time to time thereafter at reasonable times and upon prior notice to the Owner, enter upon any Lot for the purpose of determining whether or not the use and/or improvements of such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

ARTICLE 4

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

4.1 **Membership.** Every Owner, upon acquiring title to a Lot, shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be assigned or otherwise conveyed separately from the ownership of a Lot.

4.2 **Voting Rights.** Owners of Twin Homes shall be entitled to one (1) vote for each Lot or half of the Twin Home that they own or a total of two (2) votes for each Twin Home that they own in its entirety (which would be deemed to be two Lots).

4.3 **Record of Ownership.** Every Owner shall properly cause to be filed of record the deed conveying ownership of the Lot. The new Owner shall submit a copy of the deed to the Association, which shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the Secretary of the Association of the name and address of the Mortgagee; and the Secretary of the Association shall maintain all such information in the record of ownership.

ARTICLE 5

DUTIES AND POWERS OF THE ASSOCIATION

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

(a) **Recognition of Owners.** The Association shall recognize Owners as members of the Association.

(b) **Maintenance of Common Improvements.** The Association shall maintain, repair, replace, and landscape the Common Improvements.

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

(d) **Insurance.** The Association shall obtain and maintain in force the policies of insurance required by this Declaration. General liability insurance in the sum of no less than One Million Dollars (\$1,000,000) per occurrence shall be maintained. Such insurance shall be adjusted in the discretion of the association to reflect changes in the cost of living.

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

(f) **Copies of Records.** The Association shall maintain current copies of the Declaration, Articles of Incorporation, Bylaws and other similar documents, as well as its own books, records, and financial statements which shall all be available for inspection by Owners and insurers as well as by holders, insurers, and guarantors of first Mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching, or extracting from such documents. An Owner or holder, insurer, or grantor of a first Mortgage may make an audit of Association records at its own expense so long as the results of the audit are provided to the Association and such audit is conducted in a manner which does not unreasonably interfere with the business of the Association.

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

(a) **Entering Into Contracts.** In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation, or administration of the Common Improvements and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Improvements, the Association shall ensure that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon no less than ninety (90) days' written notice, the Association shall have the power and authority to pay and discharge any work done or performed by the Association in fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:

(i) **Construction and Maintenance of Common Improvements.** Construction, maintenance repair, and landscaping of the Common Improvements on such terms and conditions as the Board shall deem appropriate;

(ii) **Insurance Policies.** Such insurance policies or bonds as the Board may deem appropriate for the protection of property within Union Gardens, the Association, the members of the Board, and the Owners;

(iii) **Utility Services.** Such utility services, including (without limitation) water, sewer, trash removal, electrical, telephone, and gas services, as the Board may from time to time deem desirable;

(iv) **Professional and Nonprofessional Services.** The services of architects, engineers, attorneys, and certified public accountants and such other professional or nonprofessional services as the board may deem desirable;

(v) **Protection Services.** Fire, police, and such other protection services as the Board may deem desirable for the benefit of the Owners of any of the Property; and

(vi) **Materials, etc.** Such material, supplies, furniture, equipment, services and labor, as the Board may deem necessary.

(b) **Contract Limits.** The Board may delegate to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of One Thousand Dollars (\$1,000), or the power to sell, convey, mortgage, or encumber and Common Improvements.

5.3 **Association Rules.** The Board from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal, and enforce rules and regulations governing the use of the Common Improvements.

5.4 **Limitation of Liability and Indemnification.** No member of the Board or Architectural Control Committee acting in good faith shall be personally liable to any Owner, guest, lessee, or any other person for any error or omission of the Association, its representatives and employees, the board, any committee, or the Managing Agent. The Association shall defend and indemnify any member of the Board or Architectural Control Committee from and against any losses, claims, costs, causes of action, or other expenses deriving from the member's duties, responsibilities, or service on the Board or Architectural Control Committee provided such member was acting in good faith.

ARTICLE 6

ASSOCIATION ASSESSMENTS

6.1 **Personal Obligation and Lien.** Each Owner shall, by acquiring or in anyway becoming, vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the special and reimbursement assessments, annual and special assessments, and his pro rata share of all taxes levied on the assets owned by the Association, together with late payment fees, interest, and costs of collection, if and when applicable. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint, and several obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights or interest in the Common Improvements or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest, and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

6.2 **Purpose of Assessment.** Assessments levied by the Association shall be used for the purpose of constructing, maintaining, or promoting the beauty and integrity of the Common Improvements and the health, safety, and welfare of the residents of the Planned Unit Development. The use made by the Association of funds obtained from assessments includes, but is not limited to, payment of the cost of: constructing, maintaining, and repairing the Common Improvements; establishing and funding a reserve to cover major repair of the Common Improvements; paying taxes and insurance on the Common Improvements; and performing any duties or responsibilities of the Association as outlined in this Declaration. The Association shall maintain an adequate reserve fund or funds for maintenance, repairs, and replacement of those elements of the Common Improvements that require replacement on a periodic basis.

6.3 **Basis and Maximum Amount of Assessments.** Assessments shall not be levied on Lots owned by Delarant which have not been sold in connection with the marketing and development of Union Gardens.

(a) **Initial Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Fifty Dollars (\$150) payable annually on or before March 31.

(b) **20% Increase.** From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Assessment may be increased or decreased effective January 1 of each year by the Board without a vote of the membership, provided that any such increase shall not be more than twenty percent (20%) of the previous year's assessment. Such Assessment shall continue in effect for the following twelve (12) months, which period shall be deemed to be the assessment period.

(c) **Members' Approval.** From and after January 1 of the year immediately following the conveyance of the last Lot to an Owner, the maximum assessment may be increased or decreased by the Board in an amount greater than provided for in subsection 3b, above, hereof for the next succeeding twelve (12) calendar months, and at the end of each such period, for each succeeding period of twelve (12) months, provided that any such change shall have the approval by vote or written assent of a majority of the voting power of the Members and such increase is distributed among the Owners. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

6.4 **Special Assessments.** The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or required addition to or replacement of the Common Improvements. Any such special assessment must be assented to by a majority of the votes entitled to be cast by Owners, present in person or represented by proxy, at a meeting duly called for the purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

6.5 **Quorum Requirements.** The quorum at any meeting required by Section 6.3 or 6.4 above shall be as follows: At the first meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in sections 6.3 and 6.4 above) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

6.6 **Special Assessment of Specific Lots.** In addition to the assessments and special assessments authorized by Sections 6.3 and 6.4, above, the board may levy at any time special assessments on any Lot, if the Owner, occupant, or invitees of the same have caused any damage to the Common Improvements necessitating repairs. The aggregate amount of any such special assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and fees, including attorneys' fees, and shall be allocated among the affected Lots according to the cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work.

6.7 **Uniform Rate of Assessment.** All monthly and special assessments authorized by Sections 6.3 and 6.4, above, shall be fixed at a uniform rate for all Lots, provided however that assessments shall not accrue against the Developer or against lots owned by the Developer which are available for sale, but not yet sold.

6.8 **Assessments.** The Association shall give each Owner written notice of the amount and first due date of the assessment concerned. All Assessments provided for herein shall commence as to all Lots as of the first day of the second month following the date that a sale by Owner of the Lot concerned is closed and notice shall be given by the Association at least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of the Assessments. Annual assessments shall be prorated for the number of months remaining in the assessment year of the Association.

6.9 **Effect of Nonpayment of Assessments.** Any assessment not paid when due, shall, together with interest and costs of collection, constitute and remain a continuing lien on the affected Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the date at the rate of one and one-half percent (1½%) per month; and the Association may bring an action against the Owner or may foreclose its lien against the Lot, or both. The Association shall be entitled to recover all of its costs and expenses, including reasonable attorneys' fees, court costs, and every other expense incurred by the Association in enforcing its rights.

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

6.11 **Subordination of Lien to Mortgages.** The lien on the assessments provided herein shall be subordinated to the lien of any Mortgage to a bank, savings and loan association, insurance company or other institutional lender. No sale or transfer shall relieve any Lot from the lien of any unpaid assessments or any assessments thereafter becoming due.

ARTICLE 7

COVENANTS, CONDITIONS AND RESTRICTIONS

7.1 **Building Setbacks.** All of the Buildings, excluding improvements located below ground and unseen above ground, steps, sidewalks, driveways, curbing and landscaping, shall be set back at least as far as required under Salt Lake County ordinances and as otherwise required by the Architectural Control Committee.

7.2 **Monuments.** If Declarant chooses at its sole discretion and expense and subject to applicable county ordinances to construct monument style entries at the primary point of entry to Union Gardens from 700 East Street, it shall be the obligation of the Association and its successors and assigns to maintain such monuments and monument entry signs in good condition after they have been constructed.

7.3 **Common Improvements.** The Common Improvements shall be used only in a manner consistent with their community nature and shall be improved and used for the following purposes:

- (a) **Beautification.** Beautification of Union Gardens;
- (b) **Privacy and Security.** Privacy and security for the owners and occupants of Union Gardens;
- (c) **Access.** Vehicular and pedestrian access to and from and movement within the Development; and
- (d) **Open Space.** Open space and recreation.

7.4 **Land Use and Building Type.** None of the Property shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than a Twin Home (together with any related buildings approved by the Architectural Control Committee) not to exceed the height indicated on the Plat pertaining thereto, and one additional building (accessory building). Every living unit shall have as a minimum a fully enclosed two (2) car garage.

7.5 **Building Size and Construction.** No building in excess of two (2) stories shall be permitted. Each unit in a Twin Home located on the Property shall have a minimum habitable floor space of two thousand two hundred (2,200) square feet, exclusive of porches, decks, and garages. Exterior building surfaces shall be finished with stucco, rock, brick and some limited use of wood exclusive of roofs, doors, eaves, and soffits and as approved by the Architectural Control Committee.

7.6 **Construction Time Following Purchase.** The original grantee or grantees of any Lot from Declarant within the Property shall, within four (4) months from the purchase date of said Lot, commence construction or landscaping upon the Lot, and having commenced construction shall continue therewith and have a residential structure upon such Lot ready for occupancy with twelve (12) months from the date construction is commenced. In cases of hardship, the Board may choose to allow more time for commencement or completion of construction, but a decision by the Board to do so in one (1) case shall not be deemed to have set a precedent for other cases. In the event a residence is not constructed in accordance with the above terms and time allotted and is not completed within the time period as specified, Declarant or its devisees or assignees shall have the exclusive option to buy said lot for the sum initially paid by the grantee in purchase of such Lot plus one-half (½) the cost of improvements constructed thereon as determined by their actual price or a third-party appraiser. The cost of any such appraisal shall be paid for solely by the grantees. Any construction of any structure on the Property shall be continued diligently and completed within a reasonable time. A grantor or Owner may not avoid application of the provision by transferring a Lot to an entity owned in whole or part by such grantee or Owner nor through the use of third parties and trusts for the benefit of the same.

7.7 **Completion of Construction.** Once construction has begun, the construction of any building on any Lot shall be finished as promptly as reasonably possible. The building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage can or other garbage disposal facility of sufficient size on the site during such period. The Owner of any Lot under construction shall act at its sole cost and expense to ensure that all dust, particulate, mud and other undesirable byproducts of construction shall be thoroughly controlled, mitigated and removed from the Lot under construction and any adjoining parking areas and roads pursuant to any and all applicable government regulations and in keeping with the wholesome, clean and nuisance-free environment sought to be created by the Declaration.

7.8 **Landscaping.** The Owner must have substantially completed the landscaping of his or her front yard within one hundred fifty (150) days of the date of occupancy and the back yard within one (1) year of the date of occupancy. All front landscaping plans are subject to prior approval by the Architectural Control Committee. Upon approval and/or completion of the landscaping plan pursuant to this section, no healthy tree shall be removed, nor other major landscaping change be made without approval of the Architectural Control Committee; provided, however, notwithstanding this section, all diseased trees and bushes must be removed by the Owner within a reasonable time after the diseased condition is discovered.

7.9 **Fencing and Walls.** In order to maintain as nearly as possible a park-like feeling in the Union Gardens, owners are discouraged from construction fences and walls around their Lots and no such fences or walls shall be allowed without first being approved for style, location, height and setback by the Architectural Control Committee.

7.10 **Parking.** With the Exception of passenger automobiles, sports utility vehicles, and light-duty trucks, no vehicle of any kind including, but not limited to trucks, buses, tractors, trailers, camping vehicles, boats, boat trailers, snowmobiles, mobile homes, two and three-wheel motor vehicles or other wheeled vehicles shall be permitted to be parked on the Property except in a closed garage. Further, no passenger automobiles, sports utility vehicles, or light-duty trucks are to be parked or stored on the street or curb of the Property, except for those belonging to visitors, guests, and friends of Owners which may be parked in those designated, visitor parking stalls shown in the recorded Plat (and for periods of less than twenty-four (24) hours).

7.11 **Business and Commercial Activities.** Except for the residential development of Union Gardens by Declarant, no commercial or business activities except reasonable home occupations as may be permitted by Salt Lake County ordinances and previously approved by the Architectural Control Committee shall be engaged in or conducted on the Property.

7.12 **No Division or Subdivision of Lots.** No Lot shall be divided, subdivided, partitioned, parceled or broken up into smaller lots or units.

7.13 **Outside Storage and Equipment.** No articles, goods, materials, machinery or equipment, vehicles, trash, animals (except a dog or dogs in a reasonably sized kennel) or similar items shall be stored or kept in the open, or exposed to view from 700 East Street or the access road through Union Gardens except for (i) outdoor furniture and barbecue units in use and kept on balconies or porch areas, (ii) vehicles in use by the immediate family of the Owner, the tenant (the "Tenant") of the Owner, or the Owner's or Tenant's guests parked in permitted areas, and (iii) materials, equipment and supplies needed for the construction of improvements on a site that are temporarily stored on such site, provided said items are completely removed immediately upon completion of each phase of construction. On-site storage areas must be enclosed and screened from view and the wind.

7.14 **Outdoor and Site Lighting.** Outdoor and site lighting of the buildings, parking areas, stairs, walkways, and trails only is permitted and such lighting shall be directed downward. Lights shall be designed and placed to minimize glare.

7.15 **Utility Lines.** All permanent utility lines shall be underground. All utility appurtenances within a site, including telephone pedestals, utility meters, transformers and the like shall be screened from view from streets, sidewalks, and adjacent sites, (subject to limits imposed by utility company regulations). Care should be taken to avoid conflict with pedestrian walks, driveway vision, etc. Where possible, utilities shall be located in a common utility corridor. No cesspools, septic tank, sewage or hazardous waste disposal facility shall be erected or maintained upon the Property.

7.16 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property or which is a source of annoyance to Owners or occupants. No unlawful use shall be made of the Property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property, shall be observed, subject to the terms of any specific governmental approvals, agreements or other governmental actions.

7.17 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Lot, other than a reasonable number of household pets in Living Units which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance.

7.18 **Maintenance of Structures and Grounds.** Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, painting, replacement and care for roofs, gutters, downspouts, exterior building surface, walks, lights and fences on exterior improvements and glass surfaces. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Lot neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. All unimproved Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall be the responsibility of each Owner and shall be restored within a reasonable period of time.

7.19 **Signs.** Except as provided herein and excluding any monument signs constructed by Declarant or any sign relating to the development of Union Gardens, no signs except "For Sale" and "For Rent" signs of customary and reasonable dimensions and design shall be erected, displayed or maintained on the Property unless otherwise approved by the Architectural Control Committee.

7.20 **Rubbish and Trash.** No part of the Property shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto Lots, streets, Public Areas or common areas, if any.

7.21 **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings, excluding trailers, or sanitary facilities used during construction, shall be used on any Lot at any time as a residence either temporarily or permanently.

7.22 **Service Facilities.** Service facilities (garbage, fuel tanks, clotheslines, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring property.

7.23 **Pest Control.** No Owner shall permit any thing or condition to exist upon any portion of the Property which shall induce, breed or harbor infectious plant or animal diseases or noxious insects or vermin.

7.24 **Grades, Slopes and Drainage.** Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot without the express written permission of the Architectural Control Committee (not to be unreasonably withheld) and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grade, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

7.25 **Application to Additional Property.** The provisions of Sections 7.1 through 7.24 shall not apply to annexed Lots if any Supplemental Declaration annexing the Lots so specifies. The Supplemental Declaration Annexing such Additional Property to this Declaration may establish restrictions governing the use and conduct of such Lots different than or in addition to the restrictions set forth herein.

ARTICLE 8

ENFORCEMENT; ARCHITECTURAL CONTROL COMMITTEE

8.1 **Enforcement.** The Owner or owners, Declarant and/or the Association or its Board, shall be entitled to prosecute any proceeding at law or equity, against any person, firm, corporation, or party violating, attempting or threatening to violate any of the covenants and restrictions contained herein and to enforce, restrain, enjoin, and/or collect damages for such violation or attempted or threatened violation. Failure by the above parties, their legal representatives, heirs, successors, or assigns to enforce any of said covenants or restrictions shall in no event be deemed a waiver of the right to do so thereafter. Any and all remedies specified herein shall be deemed cumulative and not exclusive. The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect all of its costs and expenses incurred in any proceeding, including reasonable attorney's fees.

8.2 **Construction and Validity of Restrictions.** All of said conditions, covenants, and restrictions contained in this Declaration shall be construed together, but if it shall at any time be held that any of said conditions, covenants, or reservations or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and Declarant and the Owners, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the fact that any part of this Declaration be declared invalid or inoperative or for any reason becomes unenforceable.

8.3 **Architectural Control Committee.** The Architectural Control Committee shall consist of the following number of members and have the duties, powers, rights and responsibilities described hereafter and as otherwise set forth in this Declaration:

(a) **Number of Members.** The Architectural Control Committee shall initially consist of at least one (1) and not more than five (5) persons (who need not be Owners) appointed by Declarant. At any time after the earlier of (i) five (5) years from the date hereof and (ii) one (1) year following the sale of the last Lot to be sold by Declarant, the then record Owners of a majority of the Lots on the Property shall have the power through a duly recorded written instrument to change the membership of the Architectural Control Committee, but until such time Declarant may remove or replace any member of the Architectural Control Committee at any time and for any or no reason without liability. In the event of the death or resignation or the refusal or inability to act of any member of the Architectural Control Committee, the remaining members shall have full authority to approve or disapprove such plans and specifications and to designate and appoint a successor member of the Architectural Control Committee.

(b) **Approval Procedure.** Prior to the commencement of any excavations, construction, remodeling, or alteration to any structure theretofore completed, there shall first be filed with the Architectural Control Committee one (1) complete set of plans and specifications for such excavation, construction, remodeling, or alteration, together with a block or plat plan indicating the exact part of the Property the improvement will cover, and said work shall not commence unless the Architectural Control Committee shall endorse said plans as being in compliance with these covenants and otherwise approved by the Committee. The Architectural Control Committee shall have the right to refuse to approve any such plans and specifications which, in the Architectural Control Committee's sole discretion, are not desirable, and in so passing upon them the Architectural Control Committee shall have the right to take into consideration the suitability of any proposed excavation, construction, remodeling, or alterations and of the materials to be included, the harmony and effect thereof with the surroundings and the effect thereof on the outlook from the adjacent or neighboring property. The Architectural Control Committee may promulgate and maintain a set of standards for guidance in approving or disapproving plans and specifications pursuant to this section. In the event the Architectural Control Committee fails to approve or disapprove in writing said plans within thirty (30) days of their submission (or if revisions are suggested which require more time for resolution and everyone is acting in good faith, more time may be required), then said approval shall be deemed to have been given.

(c) **General Powers.** The Architectural Control Committee shall have the power and authority to take such action as it deems necessary to keep any portion of a Lot and exterior of any structure maintained so that the same complies with the Declaration. In connection therewith, the Architectural Control Committee may notify the Owner of a Lot of any violation hereunder, and after due notice, if the Owner fails to correct such violation, then in such event, the Architectural Control Committee shall cause the necessary corrections to be made and compliance hereunder to be effected and the cost and expenses thereof shall constitute a lien against the said Lot in the Manner and nature that mechanics liens are foreclosed and shall also have an action at law against the Owner for the amounts involved.

(d) **No Compensation.** No member of the Architectural Control Committee shall be entitled to any compensation for services performed pursuant to these covenants and restrictions.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 **Amendment and Repeal.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of the Owners of not less than fifty-one percent (51%) of the Lots of the Property, together with the written consent of

Declarant. Any such amendment or repeal shall become effective only upon recordation in the Office of the County Recorder of Salt Lake County, Utah, of a certificate of Declarant setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment. To the extent any amendment relates to the preservation or maintenance of private utility lines, or the existence of an entity responsible for accomplishing the same, such amendment shall be approved by the Zoning Administrator of Salt Lake County.

9.2 **Regulatory Amendments.** Notwithstanding the provisions of Section 9.1 above, Declarant shall have the right to amend this Declaration in order to comply with the requirements of any applicable statute, ordinance or regulation of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Utah, or any corporation wholly owned, directly or indirectly, by the United States or the State of Utah which insures, guarantees or provides financing for a planned community or lots in a planned community.

9.3 **Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within the Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Lots of the Property. Any such termination shall become effective only if (a) a certificate of Declarant, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Office of the County Recorder of Salt Lake County, Utah, not less than six (6) months prior to the intended termination date, and (b) prior to the intended termination date, such termination has been approved in writing by the Zoning Administrator of Salt Lake County a copy of which also shall have been recorded in the Office of the County Recorder of Salt Lake County, Utah. Such termination shall not have the effect of denying any Owner access to his Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination and shall not terminate any of the easements or right-of-way created, agreed to or granted herein.

9.4 **Assignment and Delegation.** Declarant may at any time assign and delegate to the Association or to any other person, agent, entity or committee any and all of its rights, duties and powers set forth herein and the Owners shall be bound by the determinations of and subject to such delegate or assignee to the same extent as they were so bound by Declarant. And Declarant shall be immediately released from any of its duties, obligations or responsibilities other wise provided for in this Declaration. To be effective, such written assignment and delegation shall be executed by each of Declarant and its assignee and recorded in the Office of the County Recorder of Salt Lake County.

9.5 **Joint Owners.** In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest.

9.6 **Lessees and Other Invitees.** Lessees, employees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself.

9.7 **Nonwaiver.** Failure by Declarant or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

9.8 **Construction; Severability; Number; Captions.** This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

9.9 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant: Union Gardens LLC, 838 Elgin Avenue, Salt Lake City, UT 84106; if to an Owner, at the address given at the time of the Owner's purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided herein.

SURVEYOR'S CERTIFICATE

I, Russell D. Flint, do hereby certify that I am a Registered Land Surveyor, and that I hold certificate no. 4938722 as prescribed under the laws of the State of Utah. I further certify that by the authority of the Owners, I have made a survey of the tract of land shown on this plat and described below, and have subdivided said tract of land into lots and streets, hereafter to be known as **UNION GARDEN P.U.D.**

and that same has been correctly surveyed and staked on the ground as shown on the plat. I further certify that the lot described meets the frontage width and area requirements of the applicable zoning ordinance.



BOUNDARY DESCRIPTION

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 30 TOWNSHIP 2 SOUTH RANGE 1 EAST, S.L.B.&M. CITY OF MIDVALE, COUNTY OF SALT LAKE, STATE OF UTAH. THE BASIS OF BEARING IS BETWEEN THE EAST QUARTER CORNER AND THE SOUTHEAST CORNER OF SAID SECTION, WHICH BEARS S00°04'25"W. SAID TRACT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT OF WAY LINE OF 700 EAST STREET AND ALSO THE NORTHEAST CORNER OF THE UNION PINES P.U.D. RECORDED IN BOOK 2000 PAGE 346 AT THE COUNTY RECORDERS OFFICE, SAID POINT ALSO BEING N00°04'25"E 300.58 FEET & S89°25'51"W 33.00' FROM THE EAST QUARTER CORNER OF SAID SECTION; AND RUNNING THENCE ALONG THE NORTH LINE OF SAID P.U.D. S89°25'51"W 281.67 FEET TO A FENCE LINE; THENCE FOLLOWING ALONG THE FENCE LINE THE FOLLOWING 2 CALLS (1) N10°52'13"E 116.96 FEET; (2) N03°09'42"W 90.81 FEET; THENCE N88°15'31"E 265.00 FEET TO THE WEST RIGHT OF WAY LINE OF 700 EAST STREET; THENCE ALONG SAID LINE S00°04'25"W 210.79 FEET TO THE POINT OF BEGINNING. CONTAINING 1.28 ACRES, 55,549 SQFT MORE OR LESS.

22-30-277-110-122