

When Recorded Return to:  
Carl W. Barton, Esq.  
Holland & Hart LLP  
60 East South Temple, Suite 2000  
Salt Lake City, Utah 84111

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Book - 9306 Pg - 1005-1068  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
HOLLAND & HART  
60 E SOUTH TEMPLE STE 2000  
SLC UT 84111  
By: ZJM, DEPUTY - WI 64 P.

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
FALCON COVE  
(A Planned Unit Development)**

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF FALCON COVE (A Planned Unit Development) ("Declaration") made and executed this \_\_\_\_ day of \_\_\_\_\_, 2006, by LAPIS DEVELOPMENT, LLC, a Utah Limited Liability Company with its principal place of business located in Salt Lake County, Salt Lake City, Utah, (hereinafter referred to as "Declarant").

RECITALS

A. Declarant is the record owner of that certain tract of Property more particularly described in Article II of this Declaration.

B. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end, and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration and the various Lots now or hereafter contained within the entire tract hereinafter described to the covenants, conditions, restrictions, easements, charges, assessments, obligations, and liens hereinafter set forth.

C. Declarant deems it desirable for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be incorporated under the laws of the State of Utah, as a nonprofit corporation, the FALCON COVE HOMEOWNERS' ASSOCIATION.

DECLARATION

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, restrictions, easements, charges, assessments, obligations, and liens hereinafter set forth. These covenants, conditions, restrictions and easements shall run with said interests and shall be binding upon all parties having or acquiring any right or title in said interests or any part thereof, and shall inure to the benefit of each owner thereof and are imposed upon said interests and every part thereof as a servitude in favor of each and every of said interests as the dominant tenement or tenements.

## I. DEFINITIONS

1.1. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the FALCON COVE HOMEOWNERS' ASSOCIATION, a Utah nonprofit corporation. A copy of which is attached hereto as Exhibit "B".

1.2. Association shall mean and refer to the FALCON COVE HOMEOWNERS' ASSOCIATION, a Utah nonprofit corporation, its successors and assigns.

1.3. Board shall mean and refer to the Board of Trustees of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association.

1.4. Bylaws shall mean and refer to the Bylaws of the FALCON COVE HOMEOWNERS' ASSOCIATION, a Utah nonprofit corporation. A copy of which is attached hereto at Exhibit "C".

1.5. Common Areas shall mean and refer to that part of the Property which is not included with the Lots which is owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto including but not limited to private utility lines and fixtures and other personal property owned by the Association when the context so requires. The Common Area shall also include any portion of the individual Lots designated as "Road" and sidewalks on the sides of the Road. The Common Areas are specifically described and identified in the Plat of the FALCON COVE SUBDIVISION - A PLANNED UNIT DEVELOPMENT as "FALCON COVE COMMONS - COMMON (NON-BUILDABLE) AREA" and "FALCONHEIGHTS LANE" - "PRIVATE ROAD".

1.6. Falcon Cove PUD shall mean and refer to the FALCON COVE SUBDIVISION - A PLANNED UNIT DEVELOPMENT as "FALCON COVE COMMONS - COMMON (NON-BUILDABLE) AREA" and as "FALCONHEIGHTS LANE" - "PRIVATE ROAD".

1.7. County or Salt Lake County. shall mean and refer to Salt Lake County, a political subdivision of the State of Utah.

1.8. Declarant shall mean and refer to LAPIS DEVELOPMENT, LLC, a Utah limited liability company and its successors, assigns, managers, and authorized agents.

1.9. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Falcon Cove (A Planned Unit Development).

1.10. Development shall at any point in time mean, refer to, and consist of the Subdivision then in existence.

1.11. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all

improvements located on or with respect to the Lot concerned which are used in connection with such residence.

1.12. Lot shall mean and refer to any one of the separately numbered and individually described plots of land described on a Plat: (a) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different lots; and (b) which is intended to be used as the site of a single Living Unit.

1.13. Member shall mean and refer to every person who holds a membership in the Association. However, where a Lot may be owned by more than a single person, the term "Member" with regard to representation within the Association shall in no case carry any greater weight than a single person. Likewise, in determining the constitution of a quorum only a single person from each individual Lot shall be counted toward the necessary percentage of Members required.

1.14. Mortgage shall mean any mortgage, deed of trust or trust deed of the act of encumbering any Lot or any property by a mortgage, trust deed or deed of trust.

1.15. Mortgagee shall mean any person named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.16. Owner shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. In no case shall the term "Owner" be construed to include or refer to Declarant.

1.17. Parcel shall mean and refer to the Property which is subject to this Declaration, which is filed for record in the office of the County Recorder of Salt Lake County, Utah, is separately subject to the terms of this Declaration with the intention that it shall thereby comprise the Development. The real property described in Article II of this Declaration constitutes the Parcel.

1.18. Plat shall mean and refer to any subdivision plat, any plat of a planned unit development, or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more Lots; (c) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the Subdivision created by the Plat shall comprise the Development; and (d) which is filed for record in the office of the County Recorder of Salt Lake County, Utah. Recorded prior to this Declaration as entry number \_\_\_\_\_ in book \_\_\_\_\_, page \_\_\_\_\_ of the records of the Salt Lake County, Utah Recorders office, is the subdivision plat of Falcon Cove PUD. Said subdivision plat constitutes a Plat.

1.19. Property shall mean and refer to all of the real property which is covered by a Plat.

1.20. Subdivision shall mean and refer to the entire residential development which is created and covered by a Plat.

## II. PROPERTY DESCRIPTION

2.1. Submission. The Property which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of the Declaration consists of the following-described real property situated in Salt Lake City, Salt Lake County, State of Utah.

SEE THE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY REFERENCE.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent that they are located outside the Lots included with the above-described tract; provided, however, that lines and systems specifically conveyed to the Association by Declarant shall not be included within this exclusion.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across and through and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or any assignee of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct a Living Unit on each and every Lot; and (ii) to improve the Common Areas with such facilities, including, but limited to, roads, recreational facilities, walkways and various landscaped areas, designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations of record and rights incident thereof all instruments of record, as of the date of recording of this Declaration, which affect the above-described tract or any portion thereof, including without limitation, any mortgage; all visible easements and rights-of-way; and all easements and rights-of-way of record.

### III. MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be a Member of the Association subject to the terms of this Declaration, the Articles and Bylaws. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

3.2. Voting Rights. The Association shall have the following described two classes of voting membership:

(a) Class A. 'Class A Members shall be all of the Owners other than the Declarant. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

(b) Class B. The Class B member shall be the Declarant. The Class B Member shall be entitled to eight (8) votes for each Lot in which it holds the interest required for Membership in the Association. The Class B Membership shall automatically cease and be converted to a Class A membership on the first to occur of the following events:

- i. When the total number of votes held by all Class A Members equals or exceeds the total number of votes held by the Class B Member; or
- ii. The expiration of Five (5) years after the date on which the first conveyance to a Lot purchaser is made.

3.3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.4. Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot. Each Owner shall file a copy of such conveyance document (or contract) with the secretary of the Association with a transfer fee of \$25.00, who 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 also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of

such Owner and shall be reimbursed to the Association as a "Reimbursement Assessment" in accordance with the provisions of Article V.

#### IV. PROPERTY RIGHTS IN COMMON AREAS

4.1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee or contract purchaser who resides on such Member's Lot.

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

Lot No. \_\_\_, contained within the Falcon Cove PUD, as identified in the Plat recorded as entry number \_\_\_\_\_, at \_\_\_\_\_ of the official records of the Salt Lake County Recorder. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas and Private Streets described and provided for in said Plat, this Declaration, and in the Record of Survey Map in the official record of the Salt Lake County Recorder.

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

4.3. Transfer of Title. Within 30 days of the later to occur of the following, Declarant agrees to convey to the Association title to the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities, and subject to the easement rights outlined in Section 4.1 above and any liens of any mortgagees on such easement rights): (1) substantial completion of the Common Area; or (2) closing on the sale of a minimum of eight (8) lots in the Subdivision.

4.4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas and private streets shown on the Plat (the "Private Streets") shall be subject to the following:

(a) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(b) The right of the Architectural Control Committee, as defined herein, to approve and designate the point of access from a Lot to the Private Streets in accordance with the requirements of Article VIII.

(c) The right of Salt Lake City, the County, and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas, the Private Streets and any sewer, water and storm drain trunk lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by (i) all holders of first Mortgages secured by Lots and (ii) by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for that purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

## V. ASSESSMENTS

5.1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. 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 and continuing lien 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.

5.2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purposes described in the Articles of Incorporation. The use made by the Association of funds obtained from assessments may include, but is not limited to, payment of the cost of taxes and insurance on the Common Areas; maintenance (including, without limitation, snow removal from portions of Common Areas, driveways and sidewalks leading to front porch of Living Units intended for vehicular or pedestrian traffic, but expressly excluding any cleanup related to any pets of any kind), repair and improvements of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration, the Bylaws, or the

Articles of Incorporation, including professional services fees incurred for managers, accountants, attorneys, or other service professionals.

5.3. Monthly Assessment. Monthly assessment amounts (referred to herein as a "Monthly Assessment") shall be based on an annual review of all costs incurred by the Association throughout the prior year, any deficiencies from the prior year, any reasonable estimations of anticipated increases in the current year, and the amount allotted for the Sinking Fund, as described below. Each Owner shall be assessed an amount equal to 1/8<sup>th</sup> of the total assessment which amount shall be payable in monthly installments as provided for herein. For Lots not yet sold to Owners by Declarant, Declarant shall contribute 1/8<sup>th</sup> of the total assessment payable in monthly installments for each such Lot. At the end of each annual period all amounts in excess of fifteen percent (15%) of the total costs incurred by the Association during the past annual period shall be refunded. The refund shall be given pro-rata to those contributing based upon the amount that each Owner or the Declarant have contributed to the total. In no case shall the refund include any amounts contributed to the Sinking Fund.

5.4. Sinking Fund. Declarant shall establish the amount to be allotted to a separate fund from each Monthly Assessment to cover major repairs or replacement of the Common Area improvements or infrastructure. Said amount shall be based on the expected useful life of the Common Area improvements and infrastructure and the anticipated repair and replacement costs. This fund (referred to herein as the "Sinking Fund") shall be held in trust in a separate account by the Board, to be administered by the Board specifically for such purposes, but shall not be refunded except by a unanimous vote of all members of the Association.

5.5. Maximum Monthly Assessment. As of the date under Section 5.10 each Lot shall be subject to a Monthly Assessment of not more than two hundred seventy-five dollars (\$275.00). From and after the date set under Section 5.10 the maximum Monthly Assessment may be increased or decreased so long as the change is assented to by not less than a majority of the members other than the Declarant, present in person or represented by proxy at a meeting duly called for such purposes. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The Board of Trustees of the Association may from time to time and in its discretion set the amount of the Monthly Assessment at any sum not in excess of the then applicable maximum amount.

5.6. Initial Assessment. An initial assessment shall be due and payable from each Owner on the date the closing occurs on the Lot, or if the sale is by way of a contract of sale, on the date the contract is executed by the parties thereto. The amount of the initial assessment shall be two times the amount of the maximum Monthly Assessment referred to in Section 5.5.

5.7. Special Assessments. From and after the date set under Section 5.10, the Association may levy special assessments (referred to herein as "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 the Monthly

Assessments; or (b) the cost of any construction, reconstruction or unexpected required repair or replacement in connection with the Common Areas. Any Special Assessments must be assented to by not less than a majority of the Members other than the Declarant (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each Class of Members). Members present in person or represented by proxy are entitled to cast a vote at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5.8. Reimbursement Assessment on Specific Lot. In addition to the Monthly Assessment and any Special Assessments authorized above, the Board may levy at any time assessments (referred to herein as "Reimbursement Assessments") (a) on each Lot specifically benefited by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on each Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on each Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to the provisions of this Declaration (all or part of the foregoing being sometimes referred to as a "Reimbursement Assessment"). The aggregate amount of any such Reimbursement Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such Reimbursement Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefited.

5.9. Uniform Rate of Assessment. Unless provided otherwise herein, assessments shall be fixed at a uniform rate for all Lots conveyed to or occupied by an Owner.

5.10. Monthly Assessment Due Dates. The Monthly Assessments provided for herein shall commence as to all Lots on the date a deed is delivered to the purchaser of the first Lot purchased, or if the sale is by way of a contract of sale, on the date the contract is executed by the parties thereto, or the date of occupancy agreement, or the date the Owner actually takes possession of a Lot, whichever first occurs. The first Monthly Assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy as the case may be. Thereafter all Monthly Assessments shall be due and payable on the first day of each month.

5.11. Assessment Due Date. Any assessment, provided for herein, that is not paid within ten (10) days of due date thereof shall be deemed late and subject to a late fee of \$15.00. At least fifteen (15) days prior to the effective date of any change in the amount of the Monthly Assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

5.12. No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board or the Association is not properly exercising its duties and powers as provided in this Declaration.

5.13. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. A reasonable charge may be collected by the Board for the issuance of such certificate. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

5.14. Effect of Non-Payment; Remedies; Cure.

(a) Any Monthly Assessment, Special Assessment, Reimbursement Assessment, fine or other amount due under this Declaration, the Bylaws or Rules and Regulations (as defined in Section 6.3) that is not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute and remain a continuing lien on the affected Lot; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such Assessments became due.

(b) If the assessment is not paid within sixty (60) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every expense incurred by the Association in enforcing its rights. Each Member vests in the Association the right and power to bring all actions at law or lien foreclosure against such Member or other Members for the collection of such delinquent Assessments.

(c) No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the County Recorder in Salt Lake County; said notice of claim of lien must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which shall include interest on the unpaid Assessment at the rate of eighteen percent (18%) per annum, a late charge pursuant to this Declaration, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

(d) Said Assessment lien may be enforced by sale by the Association, its attorney or any other person authorized to make the sale after failure of the Owner to make the payments specified in the notice of claim of lien within said sixty (60) day period. Any such sale provided for above is to be conducted in accordance with the provisions of the statutes of the State of Utah as said statutes may from time to time be amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot, using Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold, lease, mortgage and convey the same.

(e) Upon the timely payment, or other satisfaction, of (i) all delinquent Assessments specified in the notice of claim of lien, (ii) all other Assessments which have become due and payable with respect to the Lot as to which such notice of claim of lien was recorded and (iii) interest, late charges and attorneys' fees pursuant to this Declaration and the notice of claim of lien which have accrued, officers of the Association or any other persons designated by the Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release.

(f) The Assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

5.15. No Continuing Liability of Declarant. Notwithstanding anything to the contrary in this Article V, the Declarant shall have no continuing liability for Assessments, and no retroactive Assessments by the Association shall be effective against the Declarant, after the date the Declarant has ceased to have a Class B ownership interest in the Association.

5.16. Tax Collection by County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Salt Lake County. It is further recognized that each Owner of a Lot as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Salt Lake County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

## VI. DUTIES AND POWERS OF THE ASSOCIATION/BOARD OF TRUSTEES

6.1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, the Bylaws, 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) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Areas conveyed to it by Declarant.
- (c) The Association shall maintain and repair the clubhouse and swimming pool. The clubhouse and swimming pool shall be open from 8:00 a.m. until 10:00 p.m.
- (d) The Association shall maintain, repair, and replace all landscaping and improvements in the Common Areas.
- (e) The Association shall provide landscape maintenance to each Living Unit. For purposes of this Declaration, "Landscape Maintenance" shall include:
  - i. mowing and trimming of all lawns (front and back) within the Subdivision;
  - ii. planting, fertilizing, watering and weeding flowers located in Common Areas and Falcon Cove monument areas;
  - iii. weeding front lawns within the Subdivision;Landscape Maintenance shall not include:
  - iv. watering lawns, flowering pots or other plantings located in the Subdivision;
  - v. planting, fertilizing or weeding any backyard areas;
  - vi. weeding, installing or maintaining rock walls or waterfalls not on Common Areas.
- (f) The Association shall provide snow removal within the Subdivision on all Common Areas intended for vehicular traffic. In addition, the Association shall provide snow removal from any sidewalk running parallel to the street and from sidewalks providing pedestrians ingress and egress to each Living Unit's front porch.
- (g) Unless otherwise agreed to in writing by the Association, each Owner's responsibility to care for his/her Lot shall include, but not be limited to, the following items:

i. Each Owner shall have the obligation to provide exterior maintenance of his Living Unit including but not limited to painting, repair, replacement and care of roofs, gutters, down spouts, exterior building surfaces, and landscaping installed by an Owner or his predecessor in title. Each Owner shall paint, repair, and otherwise maintain the exterior and interior of his Living Unit and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing and heating, ventilating and air conditioning systems.

ii. In the event that the need for maintenance or repair of Common Areas as specified herein is caused through the willful or negligent acts of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and become part of the Reimbursement Assessment as provided herein.

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

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

(j) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent, as defined herein, to manage and control the Common Areas, 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 such as shall be specified by the Board. Any Managing Agent may be an independent contractor and not an agent or employee of the Association.

6.2. Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and its Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of 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) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and/or repairing such Lot or any improvement thereon, if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any

improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of the provisions of this Declaration. The Association shall have the right to permit access to the Subdivision through any and all entrances, subject to governmental requirements, and to close all or any portion of a Private Street to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right therein to any person or the public. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration, the Rules and Regulations, the Architectural Guidelines, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas (and exterior repairs of Living Units to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Areas, and provided 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 (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

- i. Construction, maintenance, repair and landscaping of the Common Areas (and exterior repairs of Living Units upon Lots to the extent necessitated by the failure of Owners of such Lots to perform such repairs) on such terms and conditions as the Board shall deem appropriate;
- ii. Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board and the Owners;
- iii. The payment of all real and personal property taxes and other charges assessed against the Common Areas unless the same are separately assessed to the Owners;
- iv. Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;
- v. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

vi. Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

vii. Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

(c) The Board may delegate by resolution or contract to a 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 Five Thousand Dollars (\$5,000.00), nor the power to sell, convey, mortgage, or encumber any Common Areas.

6.3. 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 (referred to herein as "Rules and Regulations") governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; (e) the use of Living Units for business or rental purposes; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents, including, without limitation, the imposition and collection of fines. Failure to pay any fines imposed by the Association in accordance with the Rules and Regulations or applicable law shall permit the Association to record a lien against the Lot and Living Unit of the Owner that fails to pay such fines, and the Association shall have the right to foreclose such lien in the same manner as any liens referred to herein in connection with any unpaid Assessments. The Board may also adopt guidelines (referred to herein as "Architectural Guidelines") for the construction of Living Units. Rules and Regulations and/or Architectural Guidelines adopted by the Board may be enforced in accordance with the provisions herein regarding the enforcement of land use restrictions. The Rules and Regulations shall be available at the principal office of the Association to each Owner upon request.

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

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

(a) Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "The Falcon Cove Homeowner's Association for use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear."

(b) A policy or policies insuring the Owners, the Association, and its trustees, officers, managers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$500,000 for any one person injured; \$3,000,000 for all persons injured in any one accident; and \$100,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

(c) The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Areas in light of increased construction costs, inflation, practice in the area in which the Covered Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

(d) Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Association, and such fidelity bonds shall name the Association as obligee, shall be written in an amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression.

(e) Insurance premiums for any such insurance coverage obtained by the Association shall be a Common Expense to be included in the Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in this Declaration or the Articles and Bylaws.

(f) The following additional provisions shall apply with respect to insurance:

- i. In addition to the insurance described above, the Association shall secure and all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.
- ii. All policies shall be written by a company holding rating of "AA" or better from Best's Insurance Reports.

iii. The Association shall have the authority to adjust losses.

iv. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

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

6.6. Waiver and Release. Each Owner, for themselves, their spouse and family, their guests and invitees, heirs, successors, executors and subrogors, hereby waives, releases and agrees to defend, hold harmless and indemnify the Association, its representatives, officers and employees, the Declarant, the Board, and any committee, from and against any and all claims, liabilities, suits, expenses (including reasonable attorneys fees) and negligence of any kind or nature, whether foreseen or unforeseen, arising directly or indirectly out of any Landscape Maintenance or snow removal services provided to the Owners with respect to the Property.

6.7. Quorum. Except as may otherwise be provided herein or by statute, more than forty percent (40%) of the Owners present or represented at any meeting shall constitute a quorum for the adoption of decisions. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than 48 hours, and no later than thirty (30) days after, the time set for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. A quorum for the transaction of business at the rescheduled meeting shall be thirty percent (30%) of the Owners present or represented at the meeting. All decisions at any such meeting shall be determined in accordance with the voting rights set forth in Section 3.2 hereof, and no decision at such a meeting can occur without the voting participation of the Class A Members referred to in Section 3.2 hereof.

6.8. Board of Trustees.

(a) The affairs of the Association shall be governed by a Board elected by the Association. The number of persons on the Board may be changed by amendment to the Bylaws of the Association. The Board shall have the power to manage the affairs of the Association in accordance with this Declaration and the

Bylaws. The Declarant may appoint and remove all members of the Board, all officers of the Association and exercise all powers and responsibilities delegated by this Declaration to the Association, its officers and the Board as long as Declarant is the holder of any Class B stock in the Association.

(b) The Common Areas of the Subdivision shall be managed, operated, and maintained by the Association through the Board exclusively as agent of, and in the name of, the Association and any act performed by the Board pursuant to this Declaration or the Bylaws, as the same may be amended from time to time, shall be deemed to be performed by the Board for and on behalf of the Association as its agent. The Association shall be responsible to keep all such Common Areas in good, clean, attractive, safe and sanitary condition, order, and repair provided however, that each Owner shall keep their Lot and Living Unit in a clean, sanitary, and safe condition. The Association shall be responsible for the maintenance and repair of any improvements within the Common Areas.

6.9. Authority of the Board. In addition to any other authority or power of the Board enumerated elsewhere in this Declaration or the Bylaws, the Board shall have, and is hereby granted, the following authority and powers to perform their duties:

(a) The authority, without the vote or consent of the Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar non-exclusive easements over, under, across and through the Common Areas.

(b) The authority to execute and record, on behalf of all the Owners, any amendment to the Declaration or Plat which has 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 which in any way concern the Association, so long as any vote or consent of the Owners necessitated by the subject matter of the agreement has been obtained.

(e) The power and authority to convey or transfer any interest in real property authorized by the Owners having an interest therein.

(f) The power and authority to purchase, 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 license persons not otherwise entitled to use any of the recreational areas and facilities to use the same from time to time as the Board deems appropriate upon payment of fees prescribed by it to help defray the cost of maintenance thereof.

(h) The power and authority to borrow money, provided that no indebtedness for borrowed funds shall exceed at any given time the sum of \$15,000.00 without the prior written approval of a majority of the Owners at a meeting duly called at which a quorum is present.

(i) The authority to promulgate such reasonable Rules and Regulations, and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to insure that the Common Areas are maintained and used in a manner consistent with the interest of the Owners.

(j) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions as agent of the Association.

Any instrument executed by the Board that recites facts which, if true, would establish the Board'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.

6.10. Managing Agent. The Board may carry out any of its functions that are capable of delegation through an individual or entity of its choice (the "Managing Agent"). Any Managing Agent retained for such purposes must be an individual or entity experienced and qualified in the field of property management. The Managing Agent so engaged shall be responsible for managing the Association for the benefit of the Owners and shall, to the extent permitted by law and the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself. Any agreement for such professional management of the Association which may be entered into by the Board or the Association, shall call for a term not to exceed two (2) years, if negotiated by Declarant or 1 to 3 years if negotiated by the Board or the Association and shall provide that for cause such Management Agreement may be terminated by the Board or by the Association upon at least thirty (30) days written notice.

6.11. Composition of Board. The Board shall be composed of no less than three (3) and no more than eight (8) members. At or after the first annual meeting of the Association, the members of the Board shall be elected. The term of office of Board members shall be as set forth in the Bylaws. The Board Members shall hold office until their respective successors have been elected and hold their first meeting. Only Owners, and agents of corporate Owners shall be eligible for Board membership.

## VII. USE RESTRICTIONS

Salt Lake Aqueduct Easement Property. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. All power and telephone lines must be run underground. Such easements and right-of-ways shall be reserved to the Developer, its successors and assigns, in and over said real property

for the erection, construction and maintenance and operation thereon of drainage pipes, conduits, poles, wires and other means of conveying to and from lots in said subdivision, gas, electricity, power, water, telephone, sewer and any other thing for convenience to the owners of the lots in said subdivision as may be shown on the recorded plat.

It is understood that lot numbers 1, 6, 7 and 8 are encumbered by the Salt Lake Aqueduct easement property. Owners are not permitted to plant trees over property or construct permanent structures in, on, or along United States easement. Structures that may not be constructed in, on or along United States easement include but are not limited to, permanent structures such as fences (except for fences pre-approved by the Bureau of Reclamation and Metropolitan Water District), retaining walls, block walls, buildings, garages, decks, carports, trailers, detention basins and swimming pools as designated by the United States.

All landscaping and improvements done on the United States easement are done at the Owners risk, and plans for the same shall require review and approval by the U.S. Bureau of Reclamation, (801-379-1091) hereinafter referred to as U.S. and the Metropolitan Water District of Salt Lake & Sandy, (801-509-6323) hereinafter referred to as District. Owners of lots encumbered by the Salt Lake Aqueduct easement as set forth above must 48 hours prior to beginning construction of any homes of appurtenant improvements thereon, stake the location of same in the field and notify the U.S. and the District so as to permit inspection and approval to avoid any encroachment of the subject easement.

Any and all encroachments on the easement of the U.S. requires review and approval by the U.S. and the District before any construction may begin.

Any increase in the cost to reconstruct, operate, maintain and repair the Salt Lake Aqueduct and appurtenant structures which result from the construction of the subdivision, homes and other physical structures and utility improvements in the subdivision shall be borne by the subdivider or its successor in interest in the land.

7.1. Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any Lot or Living Unit except as provided in Rules and Regulations adopted by the Board. Each Living Unit shall be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas. No room or rooms in any building may be rented or leased to any person, provided, however, that nothing contained herein shall be construed as preventing the renting or leasing of an entire Unit, but only for periods in excess of 30 days after obtaining the prior, written approval of the Association, which the Association may grant or withhold in each case in its sole and reasonable discretion. No business or profession may be conducted in a

residence constructed on a Lot which involves the solicitation or invitation of the general public.

7.2. Building Features and Materials.

(a) Living Unit Location. Each Living Unit shall be oriented as approved by the Architectural Control Committee and in accordance with the requirements of the County and any other applicable public agency.

(b) Living Unit Orientation. Each Living Unit shall be oriented in general conformance with the Living Unit Orientation Map attached hereto as Exhibit "D".

(c) Garages. Garages must be fully enclosed, accommodate a minimum of two cars, and be equipped with an automatic garage door opener. Carports are not acceptable substitutes for garages. No garage doors shall be permitted to remain open except for a temporary purpose, and the Board may adopt rules for the regulation of the opening of garage doors, including, the assessment of charges to Owners who violate or whose invitees violate such rules.

(d) Exterior Building Wall Materials. With the exception of dormers, pop-outs, chimneys, or bays that have been approved by the Architectural Control Committee for alternative finishes, the exterior finish of all Living Units shall be composed of stone or cultured stone of a type, design and color as approved by the Architectural Control Committee. Any alternative finish shall consist of stucco, wood, or hard board siding.

(e) Roof, Soffit and Fascia. Roofing material shall be restricted to thirty year architectural grade fiberglass or other materials approved by the Architectural Control Committee. Fascia and soffit materials shall be fabricated of cedar wood and/or copper and in colors approved by the Architectural Control Committee.

(f) Accessory Structures. Patio structures, trellises, sunshades, gazebos, sheds, and any other appurtenant buildings ("Accessory Structures") shall be constructed of materials consistent with the colors, textures and materials approved for the Living Unit and shall be integral to the architecture of the house and are subject to prior approval of the Architectural Control Committee, the County and any other applicable agency.

(g) Chimneys. Chimneys of approved exterior materials may not exceed the height required by appropriate governmental agencies. Exposed metal flues are not acceptable; all chimneys shall be covered with a hood to hide the flue system.

(h) Fences and Walls. Subject to the exceptions set forth below and except as to fences installed by Declarant, fencing may be installed by each Lot

Owner on rear and side yards and shall be constructed of a stained cedar wood and masonry fence with wrought iron gate(s) in accordance with the guidelines established by the Architectural Control Committee and any requirements or permits required by the County and any other agency. Fences shall not extend past the mid-point of any Living Unit and shall not exceed eight (8) feet in height.

(i) Window Coverings. All window coverings whether interior or exterior are subject to prior approval of the Architectural Control Committee.

(j) Mechanical Equipment. Air conditioning units are not permitted on roofs or through windows. No swamp coolers shall be allowed.

(k) Gas and Electric Meters. Meter locations are to be designed into the architecture of the Living Unit.

(l) Exterior Lighting. All exterior lighting shall be subject to approval by the Architectural Control Committee and subject to the following provisions:

i. All outside lights on all homes shall be of consistent finish and style.

ii. Street lighting and any replacements thereto shall remain as originally installed in terms of location and style.

iii. No front yard landscape lighting shall be allowed prior to review and approval by the Architectural Control Committee.

(m) Landscape Site Preparation Guidelines. All demolition, clearing, grubbing, stripping of soil, excavation, compaction and grading must be performed within the confines of a Lot.

(n) Drainage. All drainage of water from any Lot and the improvements thereon shall drain or flow as set forth below:

i. Any such water may drain or flow into adjacent streets and shall not be allowed to drain or flow upon, across, or under adjoining Lots or Common Areas unless an easement for such purpose is granted.

ii. All slopes or terraces on any Lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property.

(o) County and Other Approval Required. Approval of any improvements by the Architectural Control Committee does not waive the requirement for any other required public agency review or permit approval process, including, but not limited to, Salt Lake County, the City of Salt Lake or other applicable public agencies. By approving plans, the Architectural Control Committee takes no responsibility for permitting compliance, for plan

conformity or for any other criteria other than the requirements of this Declaration and any Architectural Guidelines.

(p) Metal Awnings. All awnings, "lean-tos", and patio covers are subject to prior approval of the Architectural Control Committee.

(q) Clothes Lines. No clothes lines shall be installed or maintained outside any Living Unit.

### 7.3. Landscaping and Common Areas Improvements.

(a) Any landscaping or yard improvements are subject to prior approval of the Architectural Control Committee. This restriction includes, but is not limited to, sports courts, pools, pet accommodations, and hot tubs.

(b) Except for the construction of a Living Unit which is approved in accordance with the procedures set forth in Article VIII, each Owner shall be restricted from removing or modifying trees (4 inches in caliper or larger) which are located upon and naturally grow upon such Owner's Lot, unless the same shall be dead or dying and the removal has been approved by the Architectural Control Committee. Each such Owner shall be responsible at his own cost and expense to maintain and water all such trees, including any which Declarant may have installed upon such Lot during development of the Subdivision or which are installed by Owner (or predecessor) after approval by the Architectural Control Committee in accordance with the requirements of Article VIII. All trees, shrubs and other vegetation (excluding annuals) to be installed to the front of any Living Unit or the side yard of any Lot abutting a Private Street shall be approved by the Architectural Control Committee prior to installation. The addition to, modification of or removal of trees and other approved vegetation (including removal of the same because of death which is not thereafter replaced by substitute approved vegetation) without the prior approval of the Architectural Control Committee shall be deemed a violation of the requirements of Owner to maintain the same and the Architectural Control Committee shall have the right to require Owner to restore such area to its prior approved condition at the sole cost of Owner. In the event Owner fails to restore such area as required herein, the Association shall have the right to restore the same and the cost of such restoration together with administrative expenses equal to ten percent (10%) of such costs, shall be added to and become part of the Reimbursement Assessment to which such Lot is subject. The provisions of this Section relating to the removal of trees and shrubs shall not be applicable or binding upon Declarant with respect to the initial clearing, grading and landscaping of the Property including the development of Common Areas and the installations of utilities serving the Subdivision.

(c) No portion of the Lot outside the Living Unit or approved Accessory Structures shall be used for storage of equipment or personal belongings.

7.4. Recreational Vehicles; Parking. No boats, recreational vehicles, trailers, large trucks and commercial vehicles belonging to Owners or other residents of the Property shall be parked within the Subdivision, except temporary parking not to exceed forty-eight (48) hours. No motor vehicles of any kind shall be repaired in the Subdivision. These restrictions shall not apply to emergency repairs to vehicles. Any motor vehicle must be kept in an enclosed garage. Vehicles belonging to visitors may be (i) temporarily parked on Falconheights Lane or in the common area parking for no more than twelve (12) hours or (ii) if parked in an Owner's driveway for no more than 72 hours.

7.5. Pets. No animals, other than small household pets, shall be kept or allowed on any Lot, in any Living Unit, or within any part of the Common Areas. In no event shall any Living Unit have more than two (2) pets. Whenever a pet is allowed to leave a Living Unit, it shall be kept on a leash or in a cage. No animals may be bred for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. The exterior structure for the care, housing or confinement of any such pets shall be maintained by Owner and approved by the Architectural Control Committee and in no case shall such structure be placed other than behind the Living Unit. Any Owner or other resident within the Development who violates this Section shall be subject to such penalties or fines as the Board by resolution or as regulation may provide. The term, "small household pets," shall be limited to small to medium sized domesticated dogs, cats, common household birds, and fish. No dogs that exceed 24 inches in height measured at the back hips may be kept in or on a Lot. No dog of any breed that is commonly known as an aggressive breed shall be allowed---including, but not limited to, pits bulls and rottweilers. Owners shall be responsible for the immediate removal of any animal excrements left by the pet of said Owner in the Common Areas. Any exceptions are subject to prior approval of the Architectural Control Committee. Any pet that creates or causes a nuisance in the Development, including, but not limited to, a pet that continually barks, a pet that digs under fences, or otherwise causes damage to any portion of the Development, and the Association receives three (3) written complaints regarding that particular pet, then that pet will no longer be allowed to remain in the Development and shall be required to leave the Development..

7.6. Common Areas. The Common Areas of the Development shall be improved and used only for the following purposes:

- (a) Vehicular and pedestrian access to and from and movement within the Development, and space for temporary vehicular parking.
- (b) Recreational use by Owners and occupants of Living Units and their guests.
- (c) Beautification of the Development.

(d) Such other uses as shall be determined from time to time by the Board for the benefit of members of the Association, following consultation with the Architectural Control Committee.

7.7. Exterior Fires. No exterior fires, other than those contained within receptacles manufactured and sold for grilling or barbecuing purposes, shall be allowed.

7.8. Insurance. No use shall be made of any Living Unit that shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing insurance presently known as homeowners special form coverage (Form 3, or better). An Owner may be required to obtain flood insurance as a condition to obtaining any financing covering any improvements upon a Lot.

7.9. Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in or adjacent to any Lot without prior approval of the Board.

7.10. Maintenance and Repair. No Living Unit, building, structure (including interiors thereof), or landscaping upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Architectural Control Committee, each such building, structure, or landscaping at all times shall be kept by Owners in good condition and as appropriate, adequately painted or otherwise finished by its Owner. All fences, soffit and exterior facia shall be painted, stained and/or cleaned as required not less frequently than every four (4) years by Owners of every Lot. Such obligation of the Owner maintenance and repair obligations shall extend, but shall not be limited to, the painting, repair, replacement and care of roofs, gutters, down spouts, and exterior building surfaces. If replacement is required, applicable approvals from the Architectural Control Committee, the County and applicable agencies must be obtained prior to commencing improvements.

7.11. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the employment of occupants of other Living Units or Lots. Without any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or in Living Units. Usage of any outdoor sport courts or swimming pools shall not be allowed prior to 7:00 a.m. or after 10:30 p.m.

7.12. Antennas/Satellite Dishes. No Citizen Band, Ham, or other radio antennas shall be installed or maintained on any Lot or Living Unit. Television Antennas shall only be allowed in the attic area of a Living Unit. No large satellite dishes shall be installed or maintained on any Lot or Living Unit. Installation of any Antenna or

Satellite Dish that is visible from the exterior of a Living Unit is subject to prior approval of the Architectural Control Committee, and no satellite dish may be installed on the front side of any Living Unit that faces the Private Streets.

7.13. Right of Entry. During reasonable hours, any member of the Architectural Control Committee or any member of the Board, or any officer or authorized representative of any of them, shall have the right to enter upon and inspect any Lot, and the improvements thereof, to ascertain whether or not the provisions of this Declaration and the Rules and Regulations of the Board or of the Association have been or are being complied with.

7.14. Signs. No signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except:

(a) Such signs as may be required by legal proceedings.

(b) Construction identification signs, placed and maintained only during construction of a Living Unit, not exceeding four feet wide and four feet high, for each Living Unit.

(c) A "For Sale" or "For Rent" sign, to the extent permitted by the Architectural Control Committee. No Owner may place any such sign anywhere other than on his or her Lot in a location approved by the Architectural Control Committee. All signs must be installed and maintained in compliance with required County and government agency requirements.

7.15. Trash Containers and Collection. Insofar as possible, all refuse containers shall be stored at the side of a Living Unit except to make them available for collection and then only for the shortest time necessary to effect such collection.

7.16. Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

(a) Declarant, so long as it has any interest in any of the Property; or

(b) The Association.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees. In no case shall this Declaration create any direct right of action by any Owner independent of the Association.

7.17. Exception for Declarant. Notwithstanding the restrictions contained in this Article VII, as long as Declarant is the holder of any Class A Member or Class B Member, Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities

designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by the Declarant, even though said activity is expressly restricted herein.

## VIII. ARCHITECTURAL CONTROL

8.1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Committee (referred to herein as the "Architectural Control Committee"), the function of which shall be to insure that all improvements and landscaping within the property harmonize with existing surroundings and structures. The Architectural Control Committee need not be composed of Owners. If such an Architectural Control Committee is not appointed the Board itself shall perform the duties required of the Architectural Control Committee. Notwithstanding any other provision of this Declaration, so long as Declarant is either a Class A Member or a Class B Member, Declarant may elect to remain a member of the Architectural Control Committee. Notwithstanding any other provision of this Declaration and this Section VIII, Kelli Lundgren shall have sole power and control of the Architectural Control Committee until the conditions of Section 3.2(b) of this Declaration are met.

8.2. Submission to Committee. No Living Unit, accessory building or structure or addition to a Living Unit and no landscape additions and changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit, nor of any court enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee, the County and any applicable agency as required. All such plans and specifications shall be consistent with Architectural Guidelines which shall be from time to time adopted by the Board.

8.3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Architectural Control Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures and that such proposed improvements enhance the value and aesthetics of the Subdivision. The Architectural Control Committee may employ such architects, engineers and other consultants as it deems necessary to carry out its responsibilities. Unless all rules regarding the submission of plans are complied with, such plans shall be deemed not submitted.

8.4. Approval Procedure. Any plans and specifications submitted to the Architectural Control Committee shall be submitted on a form provided by the Architectural Control Committee and in such number as required. A preliminary review of design drawings will be required with a final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Association and the remaining set (or sets) of plans will be returned to the property Owner. All plans and specifications shall be approved or disapproved by it in writing within twenty (20) days after submission. In the event the Architectural Control

Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

8.5. Architectural Review Fees. The following architectural review fees (made payable to the Association) are required with the submittal of plans and specifications: \$100.00 for each set of architectural, landscaping, fencing and lighting drawings.

8.6. Bond/Security Deposit. The Architectural Control Committee may require that an Owner post a bond, cash security deposit or irrevocable letter of credit in a form satisfactory to the Architectural Control Committee, in an amount of at least exceed \$1,000.00, in favor of the Association, as a condition to approving any proposed work or improvement. No person shall commence any work or improvement until any and all such required bonds, security deposits and letters of credit have been properly posted with the Architectural Control Committee. The deposit is intended to assure the proper clean-up of dirt and debris and the repair of any damage to the landscaping, streets or other property within the Subdivision, caused by Owner or his agents in the construction of improvements.

8.7. Address for Submittal. Plans and specifications for the construction and installation of any and all improvements within Falcon Cove PUD shall be submitted and approved by the Architectural Control Committee (prior to submittal to any required governmental agency) at the following address:

Falcon Cove PUD  
c/o Lapis Development, LLC  
6715 South 1300 East, Suite 200  
Salt Lake City, Utah 84121

The Board of Trustees of the Association has the authority to change the address for the submittal of plans and specifications.

8.8. Construction. Construction of any improvements on any Lot is subject to prior approval of the Architectural Control Committee.

(a) Once begun, any improvements, construction, landscaping, or alterations approved by the Architectural Control Committee shall be diligently prosecuted to completion:

i. The exterior construction of all structures on any Lot shall be completed within a period of one (1) year following commencement of construction.

ii. If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall, subject to approval of the Board, be entitled to temporary use and occupancy of unimproved portions of the Common Areas in the vicinity of the activity.

(b) Owners and builders shall clean up all trash and debris on the construction site at the end of each week. Trash and debris shall be removed from each construction site at least once a week to a dumping location off-site of the development. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials of the construction site. Owners and builders are prohibited from dumping, burying or burning trash anywhere on the Property.

(c) Each property owner and builder shall be responsible for providing adequate sanitary facilities for his construction personnel. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Architectural Control Committee.

(d) Construction crews shall not park on, or otherwise use, other lots or any open spaces. All construction vehicles and machinery shall be parked only in areas designated by the Architectural Control Committee.

8.9. Minimum Living Unit Size. Excluding garage and unfinished interior space, each Living Unit shall be not less than 2200 square feet above ground in size (excluding any interior space below ground).

8.10. Replacement after Loss of Living Unit. In the event of loss or destruction of any Living Unit, the replacement structure shall be generally consistent in style, size and orientation as the original Living Unit.

8.11. Landscaping. All front-yard landscaping shall be completed prior to occupancy of the Living Unit, unless otherwise approved by the Architectural Control Committee. All landscaping shall be completed as soon as possible after occupancy, however, in no event shall any landscaping remain incomplete longer than twelve (12) months after occupancy.

8.12. Failure to Complete Construction or Landscaping. Failure of an Owner to complete the construction or landscaping as required in this Article shall result in damages to the Association and shall be grounds for assessing liquidated damages in the amount of \$2,500 for each year that the construction or landscaping remains incomplete. The liquidated damage shall be treated as Reimbursement Assessments pursuant to the provisions of this Declaration regarding Reimbursement Assessments.

8.13. Liability for Damages. The Architectural Control Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VIII. Plans and specifications are not approved for engineering design, and by approving such plans and specifications neither the Architectural Control Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

8.14. Appeal In the event plans and specifications submitted to the Architectural Control Committee are disapproved thereby, the party or parties making

such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Control Committee. Within Thirty (30) days following receipt of the request for appeal, the Board shall render its written decision.

8.15. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

## IX. EASEMENTS

9.1. Owners' Rights and Duties: Utilities and Cable Television. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Property, the Owners of any Lot served by said connections, lines or facilities shall have the right to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(b) Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone or cable television lines or drainage facilities are installed within the Property, which connections serve more than one (1) Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections which service his Lot.

9.2. Utilities. Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded subdivision maps or plats of the Property are hereby reserved by the Declarant, together with the right to grant and transfer the same.

9.3. Construction and Sales. There is hereby reserved to the Declarant, including, without limitation, its sales agents and representatives and prospective purchasers of Lots together with the right in the Declarant to grant and transfer the same, over the Common Areas as the same may from time to time exist, easements for construction, display and exhibit purposes in connection with the erection and sale of Lots and Living Units within the Property; provided, however, that such use shall not be for a period beyond the sale by the Declarant of all Lots within the last phase to be

developed on the Covered Property, and provided further that no such use by the Declarant and others shall otherwise restrict the Members in the reasonable use and enjoyment of the Common Areas.

9.4. Nature of Easements. Any easements reserved to the Declarant herein, when transferred to an Owner or the Association in the same instrument conveying a Lot or Common Areas to such Owner or the Association, as the case may be, shall be appurtenant to such Owner's interest in said Lot or the Association's interest in the Common Areas, as applicable.

9.5. Transfer of Easements. As to the easements reserved to the Declarant, together with the right to grant and transfer the same to Owners, the Declarant shall convey said easements to the Owners in the same instrument conveying the interest required to be an Owner by specific description or by reference in said instrument. If such description is not contained in said instrument through inadvertence, mistake or any other cause, such easements shall nevertheless be conveyed to each Owner by such instrument.

## X. RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

10.1. Notice of Default. In the event an Owner neglects for a period of thirty (30) days or more to cure any failure on his part to perform his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's Lot.

10.2. Abandonment, Termination, Etc. Unless all of the holders of first mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission or otherwise:

- (a) To abandon or terminate the Development or to abandon or terminate the arrangement which was established by the Declarant and the Plat;
- (b) To partition or subdivide any Lot or the Common Areas;
- (c) To abandon, partition, subdivide, encumber, sell, hypothecate, transfer or otherwise encumber all or any part of the Common Areas except for the creating of easements and similar purposes consistent with the intended use of the Common Areas; or
- (d) To use hazard insurance proceeds resulting from damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

10.3. Notice of Substantial Damage or Destruction. If requested in writing by any mortgagee or secured party, the Association shall provide notice in writing in the event that there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction.

10.4. Condemnation of Eminent Domain Proceedings. The Association shall give written notice to all holders of any first mortgage lien or equivalent security interest of any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same.

10.5. Hazard Policy to Include Standard Mortgagee Clause. Each hazard policy of the insurance on the Lots or in favor of the Association on the Common Areas shall include the standard mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear, or shall be otherwise endorsed to fully protect the interest of mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

10.6. Rights Upon Foreclosure of Mortgage. The lien of the assessments provided herein shall be subordinate to the lien of any First Mortgage upon such Lot; and the holder of a First Mortgage on a Lot who comes into possession of the Lot by virtue of foreclosure of such first Mortgage, or in lieu of foreclosure obtains possession by deed or assignment, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for an adjustment in the allocation of any assessment due to the inadequacy of past assessment amounts and which adjustment is charged equally to all Lots including the mortgaged Lot and is charged after the holder comes into possession of the mortgaged Lot.

10.7. Mortgagees' Rights Concerning Amendments. No amendment to this Declaration, the By-Laws or the Articles of Incorporation, which materially and adversely impacts the security of the mortgagees, shall be accomplished or effective, unless at least two-thirds (2/3) of the mortgagees (based on one vote for each Lot) of the individual Lots have given their prior written approval to such amendment.

10.8. Mortgagees' Rights to Inspect Association Records. The holders of first Mortgages shall have the right upon reasonable notice and during business hours to inspect and copy at their own expense all books and financial records of the Association.

## XI. DESTRUCTION OF IMPROVEMENTS

11.1. Damage to Common Area. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Area, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained as required herein, for reconstruction or repair of the Common Area, shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Common Area shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy a Reimbursement Assessment for the deficiency and proceed with such restoration and repair.

11.2. Damage to Living Units. Except as otherwise provided in this Declaration, in the event of any destruction of any Living Unit or Living Units, it shall be the duty of the Owner(s) of the Living Unit or Living Units to restore and repair the same to its/their former condition, as promptly as practical, under the supervision of the Board. The proceeds of any insurance maintained as required herein, for reconstruction or repair of the Living Unit or Living Units, shall be made available and utilized for such purpose, unless otherwise provided herein. The Living Unit or Living Units shall be reconstructed or rebuilt substantially in accordance with original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than the estimated cost of restoration and repair, the Owner(s) of the Living Unit or Living Units shall be responsible for the deficiency, and the Board shall have the power to levy a Reimbursement Assessment to secure payment of the deficiency. In the event more than one Living Unit is damaged or destroyed, the available insurance proceeds shall be allocated according to the estimated costs of repair and restoration of each Living Unit.

11.3. Alternate Plans for Restoration and Repair. Notwithstanding the provisions of Paragraph 11.1 and 11.2, the Association shall have the right, by a vote of seventy-five percent (75%) of the voting power or rights of the Association, to make alternate arrangements respecting the repair, restoration or demolition of the damaged portion of the Property. The alternate plan may provide for special allocation of insurance proceeds, modification of design, or special allocation of any necessary assessments. Any plan adopted pursuant to this subparagraph shall be adopted within sixty (60) days of the damage or destruction and shall be supported by the vote of any Owner whose Living Unit has been physically damaged, to the extent the proposed plan affects the reconstruction of such Living Unit. Any such alternate arrangements shall be subject to the approval of the Architectural Control Committee.

11.4. Appraisal of Damage. In the event the parties affected by damage or destruction to the Property cannot agree, within twenty (20) days of the date of the damage, on the estimated cost of repair or the allocations referred to in this Article, the

Association shall appoint three (3) independent appraisers having at least five (5) years full-time appraisal experience in Salt Lake County, Utah, to appraise the damage and establish allocations among various damaged portions of the Property. Within twenty (20) days after the selection of the appraisers, a majority of the appraisers shall set the estimated damages and allocations. If a majority of the appraisers are unable to agree within the stipulated period of time, the average of the three (3) appraisals shall be utilized. If, however, the low appraisal and/or the high appraisal are/is more than fifteen percent (15%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If both the low appraisal and the high appraisal are disregarded, the middle appraisal shall be utilized. The cost of the appraisals required by this subparagraph shall be paid by the Association and reimbursed by the Owners through a Reimbursement Assessment.

11.5. Interior Damage. With the exception of any casualty or damage insured against by the Association pursuant to the provisions of this Declaration, restoration and repair of any damage to the interior of any individual Living Unit, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Living Unit so damaged. In the event of a determination to rebuild the Property after partial or total destruction as provided in this Article, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Control Committee as provided herein.

## XII. MISCELLANEOUS

12.1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed, postage prepaid, to the person who appears as a member or Owner, at the latest address for such person appearing in the records of the Association at the time of mailing.

12.2. Amendment. Subject to the provisions of Article X of this Declaration, any amendment hereto shall require (i) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes, which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and so long as the Class B membership exists, (ii) the written consent of the Declarant, which consent shall rest in the unilateral discretion of Declarant.

(a) Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

(b) Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the President or Vice President of the Association, and by the Declarant if the Class B Membership then exists. In such instrument the President or Vice President of

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

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

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.
- (b) The total number of votes required for authorization or approval under this Section shall be determined as of the date on which the last consent is signed.
- (c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.
- (d) Unless the consent of all Members whose memberships are appurtenant to the same Lot is secured, the consent of none of such Members shall be effective.

**12.4. Lease Provision.** Any Owner may lease his Lot and such buildings as are situated thereon; provided, however, that any lease agreement between a Lot Owner and a lessee must be in writing, and must provide, *inter alia*, that:

- (a) The terms of the lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the By-Laws; and
- (b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

**12.5. Assignability/Transfer of Declarant's Rights.** All or any portion of the rights of Declarant under this Declaration or in any way relating to the property may be assigned. In that event, Declarant acknowledges that its rights under this Declaration have been assigned for collateral purposes to a Lender of Declarant's choice (referred to herein as "Lender"). However, in the event that the original Declarant's rights, duties and obligations herein are assigned, foreclosed, sold, or otherwise transferred in any way, any successor in interest shall be bound to proceed with the development of the Subdivision in a manner that is consistent and harmonious with the architectural styles,

building size, and building orientation presently planned and contemplated by Declarant.

12.6. Dissolution. Subject to the restrictions set forth in Article X of this Declaration pertaining to mortgagee protection, the Association may be dissolved by the affirmative assent in writing of two-thirds (2/3) of the votes of both classes of membership. Upon dissolution of the Association all of its assets (including the Common Areas) may be dedicated or transferred to an appropriate public agency or authority to be used for purposes similar to those provided for in the Bylaws, the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters and sidewalks on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth herein.

12.7. Declarant's Covenant to Construct Common Areas. Declarant hereby covenants to construct and complete all Common Areas improvements and amenities indicated on the Plat within seven (7) years of the filing of this Declaration in the office of the County Recorder of Salt Lake County, Utah.

12.8. Enforcement by County. If the Association fails to maintain the Common Areas, the common access roadways, along with the curbs, gutters and sidewalk, in good order and condition, Salt Lake County and any other government agencies with jurisdiction over the Property shall have the right, but not the obligation, upon giving the Association thirty (30) days notice in writing, to step in and perform the necessary maintenance and management with the same right to lien the Lots and collect the costs thereof against the Owners as the Association has under this Declaration.

12.9. Severability. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

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

12.11. Property Part of Development. The Property shall comprise the Falcon Cove PUD.

12.12. Covenants to Run With Land. This Declaration and all 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 the Declarant, and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations,

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

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

12.14. Disputes with Declarant. No right or cause of action, as against Declarant, shall arise by virtue of this Declaration to the benefit of any individual Owner or group of Owners, whether past or present, or the Association.

(a) Any dispute which shall arise between the Declarant and any individual Owner, group of Owners, or the Association and relating to the Property shall be settled by arbitration before and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be final and may be entered in any court having jurisdiction thereof.

(b) Any dispute which shall arise between the Declarant and present or past individual Owners or groups of Owners of the Association or the Association, shall be subject to the following limitations:

i. If the dispute relates to defects or conditions of any parcel of property and/or the improvements thereon, Declarant reserves the right at its sole option to buy back the subject property and improvements thereon or any portion thereof in full settlement and release of all claims or causes of action arising from defects or conditions of the property or portion of property for an amount equal to the amount of the purchase price plus the cost of any improvements made subsequent to purchase for which clear proof of the costs can be provided.

ii. No dispute, claim or controversy shall be formally commenced, filed or initiated prior to 60 days from the date that Declarant has been served a written notice of claim which clearly enunciates the claimant(s) name(s), address(es), and phone number(s), the circumstances or issues being complained of, the relief sought, and the basis for concluding that Declarant is responsible therefor. In the event that Declarant responds by serving upon the claimant(s) a written proposal for curing the circumstances or issues being complained of within the 60 days, then the time period prior to which any dispute, claim or controversy shall be formally commenced, filed or initiated shall be increased an additional 30 days within which the claimant(s) may respond. In the event that Declarant fails to respond within 60 days or the

claimant(s) fail(s) to respond within 30 days as described above, the dispute, claim or controversy may be formally commenced.

iii. No dispute shall be commenced by the Association against the Declarant, the builders of the improvements on the Property, or the Developer without vote or agreement of Owners to which at least eighty-five percent (85%) of the votes in the Association are allocated.

iv. None of the foregoing provisions may be subsequently amended without vote or agreement of Owners to which at least eighty-five percent (85%) of the votes in the Association are allocated and written consent by the Declarant.

12.15. Lender's Agreement of Subordination. By its execution of this Declaration, Lender, agrees, covenants and declares that this Declaration shall be senior in priority to: (i) the Construction Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing, made as of 7/6, with \_\_\_\_\_ as "Trustee" and Lender as "Beneficiary" (hereinafter the "Trust Deed"), which Trust Deed was recorded on \_\_\_\_\_ as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_, beginning at page \_\_\_\_\_ of the Official Records of the Salt Lake County Recorder; and that said Trust Deed shall be subordinate to and subject to this Declaration notwithstanding.

EXECUTED the day and year first above written.

LAPIS DEVELOPMENT, LLC

By:

---

**Kelli Lundgren, Managing Member**

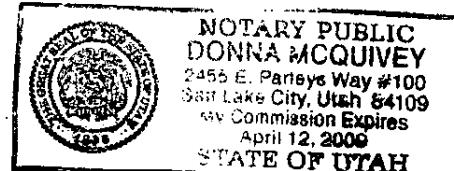
STATE OF UTAH }  
COUNTY OF SALT LAKE } ss.

On the 8th day of June, 2006, personally appeared before me Kelli Lundgren, who being by me duly sworn, did say that she is the President of Lapis Development, LLC, and that said instrument was executed on behalf of said Lapis Development, LLC, by authority.

~~NOTARY PUBLIC, Residing at:~~ *SLC, UT*

### My Commission Expires:

4-12-09





## **SUBORDINATION AND ENCUMBRANCE**

For good and valuable consideration, receipt of which is hereby acknowledged, the following agree to subordinate to and encumber with the foregoing Declaration of Covenants, Conditions and Restrictions of Falcon Cove (A Planned Unit Development) any interest to which the following may be entitled in the real property described at Exhibit "A" hereto:

[LENDER]

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF UTAH }  
COUNTY OF SALT LAKE } ss

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2006 by \_\_\_\_\_, the \_\_\_\_\_ of  
[LENDER].

My Commission Expires: \_\_\_\_\_

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**Notary Public, Residing at:**

**EXHIBIT A: LEGAL DESCRIPTION**

Exhibit A: Legal Description

# FALCON COVE A PLANNED UNIT DEVELOPMENT

## BOUNDARY DESCRIPTION:

BEGINNING AT A POINT ON THE NORTHERLY BOUNDARY LINE OF GOLDEN OAKS NO. 2 SUBDIVISION, RECORDED OCTOBER 2, 1985 AS ENTRY NO. 4145628, IN BOOK 85-10, AT PAGE 176 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, SAID POINT BEING N00°06'54"E ALONG THE SECTION LINE, 1145.87 FEET AND S89°55'10"W, 992.69 FEET FROM THE EAST QUARTER CORNER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE WEST ALONG THE NORTHERLY BOUNDARY LINE OF SAID GOLDEN OAKS NO. 2 SUBDIVISION, 326.041 FEET; THENCE N00°04'04"E 158.147 FEET TO THE SOUTHEAST CORNER OF LOT 6 OF ALTA HILLS SUBDIVISION, RECORDED SEPTEMBER 17, 1973 AS ENTRY NO. 2569862, IN BOOK 73-9, AT PAGE 79 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER; THENCE THE FOLLOWING THREE COURSES ALONG THE BOUNDARY LINE OF SAID ALTA HILLS SUBDIVISION: THENCE N29°00'00"W 250.000 FEET; THENCE N47°00'00"E 125.000 FEET; THENCE EAST 232.600 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF DANISH ROAD, RECORDED JANUARY 6, 1972 AS ENTRY NO. 2430631, IN BOOK KK, AT PAGE 50 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER; THENCE THE FOLLOWING THREE COURSE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID DANISH ROAD: THENCE S05°26'00"E 184.38 FEET; THENCE SOUTHEASTERLY 181.744 FEET ALONG THE ARC OF A 430.00 FOOT RADIUS CURVE TO THE LEFT, (CHORD BEARS S17°32'30"E, 180.394 FEET); THENCE S29°39'00"E 103.51 FEET; THENCE SOUTH 16.531 FEET TO THE POINT OF BEGINNING. CONTAINS 3.038 ACRES

8 LOTS

28-02-206-019, 020

BK 9306 PG 1047

**EXHIBIT B: ARTICLES OF INCORPORATION**

Exhibit B: Articles of Incorporation  
Falcon Cove HOA CC&Rs

RECEIVED  
JUN 08 2006  
JB  
Utah Div. of Corp. & Comm. Code

ARTICLES OF INCORPORATION  
OF  
FALCON COVE HOMEOWNERS' ASSOCIATION, INC.  
A Utah Nonprofit Corporation

06-08-06P12:55 RCV'D

Kelli Lundgren, acting as incorporator of a non-profit corporation pursuant to the Utah Revised Nonprofit Corporation Act, hereby adopts the following Articles of Incorporation for such nonprofit corporation.

ARTICLE I  
NAME

The name of the nonprofit corporation is Falcon Cove Homeowners' Association, Inc., hereinafter referred to as the "Association."

ARTICLE II  
DEFINITIONS

Except as otherwise provided herein or as may be required by the context, all terms defined in Article I of the Declaration Of Covenants, Conditions and Restrictions of Falcon Cove, a Planned Unit Development, hereinafter referred to as the "Declaration," shall have such defined meanings when used in these Articles of Incorporation.

ARTICLE III  
DURATION

The Association shall exist perpetually, or until dissolved pursuant to law.

ARTICLE IV  
PURPOSES

The Association is organized as a nonprofit corporation and shall be operated exclusively for the purpose of maintaining and governing Falcon Cove, a Planned Unit Development, hereinafter referred to as the "Development," which is located upon the real property described in the Declaration.

The Association is organized and shall be operated to perform the functions and provide the services contemplated in the Declaration, which document is to be recorded in the

office of the County Recorder of Salt Lake County, State of Utah. No dividend shall be paid and no part of the net income of the Association, if any, shall be distributed to the Members, Directors, or Officers of the Association, except as otherwise provided herein, in the Declaration, or under Utah law. Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration shall have such defined meanings when used herein.

## ARTICLE V POWERS

Subject to the purposes declared in Article IV above and any limitations herein expressed, the Association shall have and may exercise each and all of the following powers and privileges:

- (a) The power to do any and all things that the Association is authorized or required to do under the Declaration, as the same may from time to time be amended, including, without limiting the generality of the foregoing, the specific power to fix, levy, and collect the charges and assessments provided for in the said Declaration;
- (b) The power to purchase, acquire, own, hold, lease, mortgage, sell, and dispose of any and all kinds and character of real, personal, and mixed property (the foregoing particular enumeration in no sense being used by way of exclusion or limitation), and while the owner of any of the foregoing, to exercise all rights, powers, and privileges appertaining thereto; and
- (c) The power to do any and all things that a non-profit corporation may now or hereafter do under the laws of the State of Utah.

## ARTICLE VI MEMBERSHIP

The members of the Association shall be all of the Owners of a fee or undivided interest in any Lot in the Development, as such owners are shown on the records of the County Recorder of Salt Lake County, State of Utah. The term "owner" shall not include any mortgagee, trustee, or beneficiary under any mortgage, trust deed, or other security instrument by which a Lot or any part thereof is encumbered (unless such mortgagee, trustee, or beneficiary has acquired title for other than security purposes). If record ownership of a Lot in the Development is jointly held, the Membership appertaining to such Lot shall also be jointly held. Membership in the Association shall be mandatory and not optional. Each Membership in the Association shall be appurtenant to and shall not be separated from the Lot to which it relates. No person or entity other than an owner of a Lot in the Project may be a Member of the Association.

5/8/2006  
Receipt Number: 1807350  
Amount Paid: \$22.00

• POOR COPY.  
CO RECORDER

## ARTICLE VII MEMBERSHIP CERTIFICATES

The Association may issue certificates of Membership, but such certificates shall not be necessary to evidence Membership in the Association. Membership in the Association shall begin immediately and automatically upon becoming a record owner of the Lot to which such Membership appertains and shall cease immediately and automatically upon an Owner ceasing to be a record owner of such Lot.

## ARTICLE VIII VOTING RIGHTS

In any matter requiring the vote of the Members, each Member shall be entitled to one vote for each Lot owned by such Member. If a Membership is jointly held, any or all holders thereof may attend any meeting of the Members, but such holders must act unanimously to cast the votes relating to their joint Membership. Any designation of a proxy to act for joint holders of a membership must be signed by all such holders. With respect to matters to be voted upon by the Members as provided in the Declaration, the voting rights and requirements shall be as set forth in the Declaration. Cumulative voting is not permitted.

## ARTICLE IX ASSESSMENTS

Members of the Association shall be subject to assessments by the Association from time to time in accordance with the provisions of the Declaration and shall be liable to the Association for payment of such assessments. Members shall not be individually or personally liable for the debts or obligations of the Association.

## ARTICLE X PRINCIPAL OFFICE AND REGISTERED AGENT

The address of the initial principal office of the Association is 6715 South 1300 East, Suite 200, Salt Lake City, Utah 84121, and the name of the initial registered agent of the Association at such address is Kelli Lundgren.

## ARTICLE XI BOARD OF DIRECTORS

The affairs of the Association shall be managed by a Board of Directors, consisting of not less than three (3) Directors and no more than eight (8), as prescribed in the Bylaws. The Declarant, Lapis Development, LLC, a Utah limited liability company, its successors and assignees, shall have the exclusive right to appoint and to remove all members of

the Board of Directors of the Association until the occurrence of the events or the expiration of the time periods referred to in the Declaration resulting in the elimination of the Class B Membership. Directors may, but need not be, Members of the Association.

## ARTICLE XII MANAGING AGENT

The Board of Directors may by written contract delegate a professional management organization or individual to be the Managing Agent to carry out such of its managerial duties, responsibilities, functions, and powers as are properly delegable.

## ARTICLE XIII BYLAWS, RULES AND REGULATIONS

The Board of Directors may adopt, amend, repeal, and enforce Bylaws and reasonable Rules and Regulations governing the operation of the Association and the operation and use of the Project, to the extent that the same are not inconsistent with these Articles of Incorporation or the Declaration.

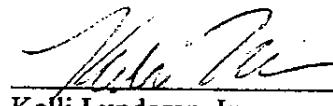
## ARTICLE XIV INCORPORATOR

The name and address of the incorporator of the Association is Kelli Lundgren, President, Lapis Development, LLC, 6715 South 1300 East, Suite 200, Salt Lake City, Utah 84121.

## ARTICLE XV AMENDMENTS

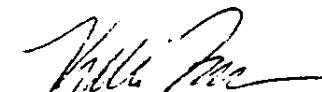
Except as otherwise provided by law or by the Declaration, these Articles of Incorporation may be amended in accordance with Utah law upon the affirmative vote of not less than sixty-six and two-thirds percent (66 2/3%) of the voting power of the Members of the Association.

Dated this 8<sup>th</sup> day of June, 2006.



Kelli Lundgren, Incorporator

I hereby accept my appointment as registered agent.



Kelli Lundgren, Registered Agent

Poor Copy  
CO RECORDER

3264230\_1.DOC

**EXHIBIT C: BYLAWS**

Exhibit C: Bylaws  
Falcon Cove HOA CC&Rs

BYLAWS  
OF  
FALCON COVE HOMEOWNERS' ASSOCIATION, INC.  
A Utah Nonprofit Corporation

Pursuant to the provisions of the Utah Revised Nonprofit Corporation Act, the Board of Directors (the "Board") of Falcon Cove Homeowners' Association, Inc., a Utah nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation.

ARTICLE I  
NAME AND PRINCIPAL OFFICE

1.01 Name. The name of the nonprofit corporation is Falcon Cove Homeowners' Association, Inc., hereinafter referred to as the "Association".

1.02 Offices. The principal office of the Association shall be at 6715 South 1300 East, Suite 200, Salt Lake City, Utah 84121.

ARTICLE II  
DEFINITIONS

2.01 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in Article I of the Declaration of Covenants, Conditions and Restrictions of Falcon Cove, a Planned Unit Development, hereinafter referred to as the "Declaration", shall have such defined meanings when used in these Bylaws.

ARTICLE III  
MEMBERS

3.01 Annual Meetings. The annual meeting of Members shall be held in January of each year, the specific date, time, and place to be fixed by the Board, beginning with the year following the year in which the Articles of Incorporation are filed, for the purpose of electing Directors and transacting such other business as may come before the meeting. If the election of Directors shall not be held on the day designated herein for the annual meeting of the Members, or at any adjournment or postponement thereof, the Board shall cause the election to be held at a special meeting of the Members to be convened as soon thereafter as may be convenient. The Board may from time to time by resolution change the date and time for the annual meeting of the Members.

3.02 Special Meetings. Special meetings of the Members may be called by the Board, the President, the Declarant, or upon the written request of Members holding not less than

ten percent (10%) of the voting power of the Members of Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Board or the President.

3.03 Place of Meetings. The Board may designate any place in Salt Lake County, State of Utah as the place of meeting for any annual meeting or for any special meeting called by the Board. A waiver of notice signed by all of the Members may designate any place, either within or without the State of Utah, as the place for holding such meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be at the principal office of the Association.

3.04 Notice of Meetings. The Board shall cause written or printed notice of the time, place, and purposes of all meetings of the Members (whether annual or special) to be delivered, not more than sixty (60) nor less than ten (10) days prior to the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Member at his registered address, with first-class postage thereon prepaid. Each Member shall register with the Association such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a Member's Unit address shall be deemed to be his registered address for purposes of notice hereunder.

3.05 Members of Record. Upon purchasing a Lot in the Development, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Lot has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining Members entitled to notice of or to vote at any meeting of the Members, or any adjournment thereof, the Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for determining Members entitled to notice of or to vote at any meeting of the Members. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining Members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the owners of record of each Lot in the Project shall be deemed to be the Members of record entitled to notice of and to vote at the meeting of the Members.

3.06 Quorum. At any meeting of the Members duly called and noticed, more than forty percent (40%) of the Members and proxy holders present shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than 48 hours, and no later than thirty (30) days after, the time set for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. A quorum for the transaction of business at the rescheduled meeting shall be thirty percent (30%) of the Owners present or represented at the meeting. All decisions at any such meeting shall be determined in accordance with the voting rights set forth in Section 3.08 hereof, and no decision at such a meeting can occur without the voting participation of the Class A Members referred to

in Section 3.08 hereof.

3.07 Proxies. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member himself or by his attorney thereunto duly authorized in writing. If a membership is jointly held, the instrument authorizing a proxy to act must have been executed in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.08 Votes. With respect to each matter submitted to a vote of the Members, each Member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Lot of such Member, as set forth in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Utah law. The election of Directors shall be by ballot. If a membership is jointly held, all or any holders thereof may attend each meeting of the Members, but such holders must act unanimously to cast the votes relating to their joint Membership.

3.09 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting form of proxies, and method of ascertaining Members present shall be deemed waived if no objection thereto is made at the meeting.

3.10 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

## ARTICLE IV BOARD OF DIRECTORS

4.01 General Powers. The property, affairs, and business of the Association shall be managed by its Board. The Board may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws, or by the Declaration vested solely in the Members. The Board may by written contract delegate, in whole or in part, as Managing Agent a professional management organization or person such of its duties, responsibilities, functions, and powers as are properly delegable.

4.02 Number, Tenure and Qualifications. The number of Directors of the

Association shall initially be three (3). The initial Board shall be appointed by Lapis Development, LLC as specified in the Articles of Incorporation, until the occurrence of events or the expiration of the time periods referred to in the Declaration, and shall serve until Declarant turns over to the Class A Members, as provided in Sections 3.2 and 4.3 of the Declaration, the responsibility for electing Directors. At the first annual meeting thereafter, the Members shall elect for a term of Three (3) years Directors to fill the vacancies created. Directors may, but need not be, Members of the Association. Each Director shall hold office until his successor shall have been elected or appointed and qualified.

**4.03 Regular Meetings.** The regular annual meeting of the Board shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of the Members. The Board may provide by resolution the time and place for holding of additional regular meetings without other notice than such resolution.

**4.04 Special Meetings.** Special meetings of the Board may be called by or at the request of any Director. The person or persons authorized to call special meetings of the Board may fix any place, within or without the State of Utah, as the place for holding any special meeting of the Board called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally, or mailed to each Director at his registered address, or by Telegram. If mailed, such notice shall be deemed to be delivered when deposited in the U. S. mail so addressed, with first-class postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to have been delivered when the telegram is delivered to the telegraph company. Any Director may waive notice of a meeting.

**4.05 Quorum and Manner of Acting.** A majority of the then authorized number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. The Directors shall act only as a Board, and individual Directors shall have no powers as such.

**4.06 Compensation.** No Director shall receive compensation for any services that he may render to the Association as a Director; provided, however, that a Director may be reimbursed for expenses incurred in performance of his duties as a Director to the extent such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a Director.

**4.07 Resignation and Removal.** A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director, except a Director appointed by Declarant, may be removed at any time, for or without cause, by the affirmative vote of seventy-five percent (75%) of the voting power of the Members of the Association at a special meeting of the Members duly called for such purpose.

**4.08 Vacancies and Newly Created Directorships.** If vacancies shall occur in the Board by reason of the death, resignation or disqualification of a Director (other than a

Director appointed by Declarant), or if the authorized number of Directors shall be increased, the Directors then in office shall continue to act, and such vacancies or newly created Directorships shall be filled by a vote of the Directors then in office, though less than a quorum, in any way approved by such Directors at the meeting. Any vacancy in the Board occurring by reason of removal of a Director by the Members may be filled by election at the meeting at which such Director is removed. If vacancies shall occur in the Board by reason of death, resignation or removal of a Director appointed by Declarant, such vacancies shall be filled by appointments to be made by Declarant. Any Director elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor or for the term of the newly created Directorship, as the case may be.

4.09 Informal Action by Directors. Any action that is required or permitted to be taken at a meeting of the Board, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

## ARTICLE V OFFICERS

5.01 Officers. The officers of the Association shall be a President, Vice President, Secretary, Treasurer and such other officers as may from time to time be appointed by the Board.

5.02 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board annually at the regular annual meeting of the Board. In the event of failure to choose officers at such regular annual meeting of the Board, officers may be chosen at any regular or special meeting of the Board. Each such officer (whether chosen at a regular annual meeting of the Board or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices, except that the President may not also be the Secretary. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office. The President, Vice President, Secretary and Treasurer shall be and remain Directors of the Association during the entire term of their respective offices. No other officers need be a Director.

5.03 Subordinate Officers. The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine. The Board may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. Subordinate officers need not be Members or Directors of the Association.

5.04 Resignation and Removal. Any officer may resign at any time by

delivering a written resignation to the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board at any time, for or without cause.

5.05 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting.

5.06 The President. The President shall be the chief executive officer of the Association and shall exercise general supervision over its property and affairs. The President shall preside at meetings of the Board and at meetings of the Members. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board may require of him. The president shall be invited to attend meetings of each committee.

5.07 The Vice President. The Vice President shall act in the place and stead of the President in the event of the President's absence or inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

5.08 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board may require him to keep. The Secretary shall also act in the place and stead of the President in the event of the President's and the Vice President's absence or inability or refusal to act. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board may require of him.

5.09 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the Members and at any meeting of the Board. He shall perform such other duties as the Board may require of him.

5.10 Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of his duties as an officer to the extent such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as an officer.

## ARTICLE VI COMMITTEES

6.01 Designation of Committees. The Board may from time to time by

resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall include at least one (1) Director. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of his duties as a committee member to the extent that such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a committee member.

6.02 Proceedings of Committees. Each committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

6.03 Quorum and Manner of Action. At each meeting of any committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.04 Resignation and Removal. Any member of any committee designated hereunder by the Board may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, for or without cause, remove any member of any committee designated by it hereunder.

6.05 Vacancies. If any vacancy shall occur in any committee designated by the Board hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

## ARTICLE VII INDEMNIFICATION

7.01 Indemnification: Third Party Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture,

trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

**7.02 Indemnification: Association Actions.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Director or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

**7.03 Determinations.** To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 7.01 or 7.02 hereof, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Sections 7.01 or 7.02 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Sections 7.01 or 7.02 hereof. Such determination shall be made either (i) by the Board by a majority vote of disinterested Directors or (ii) by independent legal counsel in a written opinion, or (iii) by the Members by the affirmative vote of at least sixty-six and 2/3 percent (66 2/3%) of the voting power of the Members of the Association at any meeting duly called for such purpose.

**7.04 Advances.** Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article or otherwise.

7.05 Scope of Indemnification. The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, insurance policies, vote of disinterested Members or Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this Article shall apply to all present and future directors, officers, managers, employees, and agents of the Association and shall continue as to such persons who cease to be directors, officers, managers, employees, or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

7.06 Insurance. The Association may purchase and maintain insurance on behalf of any person who was or is a trustee, director, officer, employee, or agent or was or is serving at the request of the Association as a trustee, director, officer, manager, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit).

7.07 Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute expense of the Association and shall be paid with funds from the Assessments referred to in the Declaration.

## ARTICLE VIII FISCAL YEAR AND SEAL

8.01 Fiscal Year. The fiscal year of the Association shall begin on the first day of January each year and end on the 31st day of December next following, except that the first fiscal year shall be a partial year and shall begin on the date of incorporation.

8.02 Seal. The Board may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the words "Corporate Seal".

## ARTICLE IX RULES AND REGULATIONS

9.01 Rules and Regulations. The Board may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Development, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. The Members shall be provided with copies of all rules and regulations adopted by the Board, and with copies of all amendments and revisions thereof.

## ARTICLE X AMENDMENTS

10.01 Amendments. Except as otherwise provided by law, by the Articles of Incorporation, by the Declaration, or by these Bylaws, these Bylaws may be amended, altered, or repealed and new Bylaws may be made and adopted by the Members upon the affirmative vote of at least fifty-one percent (51%) of the voting power of the Members of the Association; provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed, or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the total voting power of the Members of the Association, shall have been executed and verified by the current President of the Association.

IN WITNESS WHEREOF, the undersigned, constituting all of the Directors of Falcon Cove Homeowners' Association, Inc., have executed these Bylaws on the 12th day of June, 2006.

  
\_\_\_\_\_  
Director

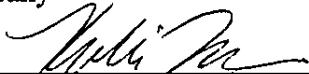
\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

OWNER'S CONSENT

On this 8<sup>th</sup> day of June, 2006, the undersigned, as the Declarant and owner of the land upon which the Development is located does hereby consent to and execute these Bylaws.

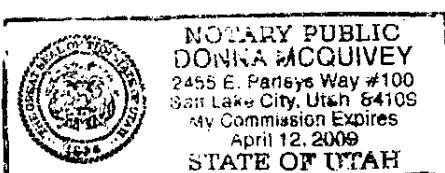
Lapis Development LLC, a Utah limited liability company



By: Kelli Lundgren  
Its: Managing Member

STATE OF UTAH )  
:ss  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of June, 2006, by Kelli Lundgren the Managing Member of Lapis Development LLC, a Utah limited liability company.



NOTARY PUBLIC  
Residing at: SLC, UT  
My Commission Expires: 4-12-09

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**EXHIBIT D: LIVING UNIT ORIENTATION**

## Exhibit D: Living Unit Orientation Falcon Cove HOA CC&Rs 1-12-02

