

ENT 106270;2005 PG 1 of 30  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2005 Sep 21 11:06 am FEE 91.00 BY SB  
RECORDED FOR HOLT, JANICE

AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
ROBBINS' ROSEWOOD ESTATES PLATS "B" AND "C"

TABLE OF CONTENTS

ARTICLE I - DEFINITIONS ..... 6

1.01 Association .....6

1.02 Board .....6

1.03 Common Areas .....6

1.04 Declaration .....6

1.05 Design Committee .....6

1.06 Living Unit .....6

1.07 Managing Agent .....6

1.08 Mortgage .....6

1.09 Owner .....6

1.10 Property .....7

1.11 Living Unit .....7

1.12 Plat .....7

1.13 Member .....7

1.14 Roadways .....7

ARTICLE II - SUBMISSION AND DIVISION OF PROJECT .....7

2.01 Submission .....7

2.02 Division into Living Units and Common Areas .....7

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS IN TILE ASSOCIATION

3.01 Membership ..... 8

3.02 Voting Rights .....8

3.03 Multiple Ownership Interests .....8

3.04 Record of Ownership .....8

ARTICLE IV - DUTIES AND POWERS OF THE ASSOCIATION .....8

4.01 Duties of the Association.....8

4.02 Powers and Authority of the Association .....9

4.03 Association Rules ..... 11

4.04 Fines ..... 11

4.05 Limitation of Liability ..... 11

ARTICLE V - ASSESSMENTS ..... 11

5.01 Personal Obligation and Lien .....11

5.02 Purpose of Assessments .....12

5.03 Monthly Assessments .....12

5.04 Special Assessments .....12

5.05 Quorum Requirements.....12

5.06 Special Assessment on Specific Living Units .....13

5.07 Uniform Rate of Assessment ..... 13

5.08	<u>Monthly Assessment Due Dates</u> .....	13
5.09	<u>Certificate Regarding Payment</u> .....	13
5.10	<u>Effect of Nonpayment- Remedies</u> .....	13
5.11	<u>Priority of Lien to Mortgages</u> .....	14
<b>ARTICLE VI - PROPERTY RIGHTS AND CONVEYANCES</b> .....		14
6.01	<u>Easement Concerning Common Areas</u> .....	14
6.02	<u>Form of Conveyancing: Leases</u> .....	14
6.03	<u>Transfer of Title to Common Areas</u> .....	15
6.04	<u>Limitation on Easement</u> .....	15
6.05	<u>Reservation of Access and Utility Easements</u> .....	16
6.06	<u>Easements for Encroachments</u> .....	16
6.07	<u>Easements for Construction, Development and Maintenance Activities</u> .....	16
<b>ARTICLE VII - USE RESTRICTIONS</b> .....		17
7.01	<u>Single Family Residence</u> .....	17
7.02	<u>Business or Commercial Activity</u> .....	17
7.03	<u>Nuisances</u> .....	17
7.04	<u>Signs</u> .....	17
7.05	<u>Parking and Vehicular Restrictions</u> .....	17
7.06	<u>Animal Restriction and Garden Restriction</u> .....	18
7.07	<u>Trash</u> .....	19
7.08	<u>View Obstructions</u> .....	19
7.09	<u>Temporary Buildings</u> .....	19
7.10	<u>Common Area Facilities</u> .....	19
7.11	<u>Outside Installations</u> .....	19
7.12	<u>Insurance Rates</u> .....	19
7.13	<u>Drilling</u> .....	19
7.14	<u>Further Subdivision</u> .....	20
7.15	<u>Drainage</u> .....	20
7.16	<u>Water Supply Systems</u> .....	20
7.17	<u>No Renting</u> .....	20
<b>ARTICLE VIII - ARCHITECTURAL CONTROL</b> .....		21
8.01	<u>Organization of the Design Committee</u> .....	21
8.02	<u>Actions Requiring Approval</u> .....	21
8.03	<u>Standard of Design Review</u> .....	21
8.04	<u>Design Committee Rules and Architectural Standards</u> .....	21
8.05	<u>Approval Procedure</u> .....	22
8.06	<u>Variance Procedure</u> .....	22
8.07	<u>Nonwaiver</u> .....	22
8.08	<u>Completion of Construction</u> .....	22
8.09	<u>Exemption of The Association</u> .....	22
8.10	<u>Estoppel Certificate</u> .....	22

8.11	<u>Disclaimer of Liability</u> .....	22
ARTICLE IX - MAINTENANCE AND REPAIR OBLIGATIONS .....		23
9.01	<u>Structural Maintenance Areas</u> .....	23
9.02	<u>Maintenance Obligations of Owners</u> .....	23
9.03	<u>Maintenance Obligations of Association</u> .....	23
9.04	<u>Damage and Destruction Affecting Residences-Duty to Rebuild</u> .....	24
9.05	<u>Variance in Exterior Appearance and Design</u> .....	24
9.06	<u>Time Limitation</u> .....	25
ARTICLE X - INSURANCE .....		25
10.01	<u>Liability Insurance</u> .....	25
10.02	<u>Additional Insurance; Further General Requirements</u> .....	25
10.03	<u>Review of Insurance</u> .....	25
10.04	<u>Living Units Not Insured by Association</u> .....	26
10.05	<u>Insurance Obligations of Owners</u> .....	26
10.06	<u>Replacement or Repair of Property</u> .....	26
10.07	<u>Waiver of Subrogation</u> .....	26
10.08	<u>Fidelity Coverage</u> .....	27
10.09	<u>Other Insurance and General</u> .....	27
ARTICLE XI - CONDEMNATION .....		27
ARTICLE XII RIGHTS OF FIRST MORTGAGEES .....		28
12.01	<u>Preservation of Regulatory Structure and Insurance</u> .....	28
12.02	<u>Preservation of Common Area; Change in Method of Assessment</u> ...	28
12.03	<u>Notice of Matters Affecting Security</u> .....	28
12.04	<u>Notice of Meetings</u> .....	29
12.05	<u>Right to Examine Association Records</u> .....	29
12.06	<u>Right to Pay Taxes and Charges</u> .....	29
12.07	<u>Exemption from Any First Right of Refusal</u> .....	29
ARTICLE XIII - MISCELLANEOUS .....		29
13.01	<u>Notices</u> .....	30
13.02	<u>Amendment</u> .....	30
13.03	<u>Consent in Lieu of Vote</u> .....	30
13.04	<u>The Association's Rights Assignable</u> .....	31
13.05	<u>Interpretation</u> .....	31
13.06	<u>Covenants to Run With Land</u> .....	31
13.07	<u>Duration</u> .....	31
13.08	<u>Effective Date</u> .....	32
EXHIBIT "A"-LEGAL DESCRIPTION .....		33

AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
ROBBINS ROSEWOOD ESTATES PLATS "B" AND "C"

THIS AMENDED AND RESTATED DECLARATION is made and executed this \_\_\_\_\_ day of September, 2005, by the Board of Trustees of the ROBBINS' ROSEWOOD ESTATES HOMEOWNERS ASSOCIATION, INC., a Utah Non-Profit Corporation (the "Association"). The Association may hereinafter also be referred to as and shall be considered the "Declarant" pursuant to the provisions of the Utah Condominium Ownership Act.

RECITALS:

A. The Association is a Non-Profit Corporation, whose shareholders are the Owners of the individual Living Units located within that certain tract of land (the "Property") in the City of Payson, County of Utah, State of Utah, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof. The Association also collectively owns the Common Areas around the Living Units, and is charged with maintaining and regulating the Property, among other things. The Association, by and through these covenants, desires to maintain and regulate the Living Units and Common Areas.

B. The Association 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 the Owners thereof, The Association hereby subjects the Property to these Amended and Restated covenants, restrictions, easements, charges and liens set forth in this Declaration, which shall be recorded in the official records of Utah County, State of Utah.

C. The Association has deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas, collect and disburse the assessments and charges provided for in the Declaration and otherwise administer and enforce the provisions of the Declaration. For such purposes, the Association has caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, the Robbins' Rosewood Estates Homeowners Association, Inc. (the "Association").

D. The Association has been subject to Covenants recorded at Entry No. 92934, Book 4443, Page 468 in the Utah County Recorder's Office (the "Existing Covenants"). The Association has found that the Existing Covenants are contradictory and confusing, and the Association is recording these Amended and Restated Covenants, Conditions and Restrictions (the "Amended Covenants") to clear up the confusion and allow the Association to run more smoothly. Any changes to the Existing Covenants by the Amended Covenants shall hereinafter have binding effect and the Amended Covenants shall be the covenants that shall be binding upon the Association and its Owners in the future.

NOW, THEREFORE, for the foregoing purposes, the Association declares that the Property shall be subject to this Declaration and that the Property is and shall be held,

transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ENT 106270:2005 PG 6 of 30

## ARTICLE I - DEFINITIONS

Terms not otherwise defined herein shall have the meanings specified in the Utah Condominium Ownership Act and/or the Utah Community Association Act. When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated:

1.01 Association shall mean the Robbins' Rosewood Estates Homeowners Association, Inc., a Utah nonprofit corporation.

1.02 Board shall mean the Board of Trustees of the Association, charged with and having the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property.

1.03 Common Areas shall mean all property, including streets, roadways, highways, rights-of-way and utilities, all limited common areas and facilities, and all area owned or designated on the recorded plat as being owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto.

1.04 Declaration shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Robbins' Rosewood Estates Plats "B" and "C."

1.05 Design Committee shall mean the Board, or alternatively, a Design Committee established by the Board and referred to in Article VIII of this Declaration.

1.06 Limited Common Areas and Facilities or Limited Common Areas shall mean those Common Areas designated in the Declaration and shown on the Plat as reserved for use of a certain Unit or certain Units to the exclusion of other Units. Limited Common Areas include the two parking spaces specifically assigned for the exclusive use of the individual Unit Owners.

1.06 Living Unit shall mean a structure or portion thereof which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the same Living Unit and used in conjunction with such residence. If a boundary line between any two Living Units lies within a structure, the boundary line shall be deemed adjusted to run down the center of the wall between the Living Units. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors, door frames, and trim, wallpaper, paint, flooring, carpeting and

tile. All pipes, wires, conduits, or other public utility lines or installation constituting a part of the Unit or serving only the Unit, and any structural members of any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

1.07 Managing Agent shall mean any person or entity appointed or employed as Managing Agent pursuant to Section 4.02(c) of Article IV of this Declaration.

1.08 Mortgage shall mean any mortgage, deed of trust, or trust deed or the act of encumbering any property by a mortgage, deed of trust or trust deed; and mortgage shall mean any mortgagee of a mortgage and any trustee or beneficiary of a deed of trust or trust deed.

1.09 Unit Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Utah County, Utah) of a fee or undivided fee interest in any Living Unit, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record. Notwithstanding any applicable theory relating to mortgages, no mortgagee shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. The Association shall be an Owner with respect to any Living Unit owned by it. The designations "Owner" and "Member" shall be synonymous for purposes of this Declaration.

1.10 Property shall mean the Property described in Exhibit "A" attached hereto, which includes all land covered by this Declaration, including Common Areas and Living Units.

1.11 Plat shall mean and refer to the Record of Survey Map of Robbins' Rosewood Estates Plats "B" and "C" recorded in the official records of Utah County, Utah.

1.12 Member shall mean and refer to every person who holds membership in the Association.

1.13 Roadways shall mean that portion of the Common Area consisting of the streets and roads within the Property for the use and benefit of the Owners as such are identified and depicted on the Plat.

## ARTICLE II - PROPERTY

2.01 Submission. The Association hereby submits the Property to the Provision of the Condominium Ownership Act and/or the Utah Community Association Act. The Property consists of the real property situated in Payson City, Utah County, State of Utah, described in Exhibit "A" attached hereto and by this reference made a part hereof. The Property has been subdivided into Living Units 1 through 18, ROBBINS' ROSEWOOD ESTATES PLAT "B" AND Units 19 through 23, ROBBINS' ROSEWOOD ESTATES PLAT "C" as identified in

2.02 Division into Living Units and Common Areas. The Property is hereby divided into twenty-two (22) Living Units, each consisting of a fee simple interest in a portion of the Property as set forth in the Plat. All portions of the Property not designated as Living Units shall constitute the Common Area, which is owned by the Association for the benefits of all Owners in accordance with the provisions of this Declaration.

### ARTICLE III - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.01 Membership. Every Owner upon acquiring title to a Living Unit shall automatically become a Member of the Association and shall remain a Member thereof until such time as his/her ownership of such Living Unit ceases for any reason, at which time his/her membership in the Association with respect to such Living Unit shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Living Unit.

3.02 Voting Rights. The Association shall have the following Voting Rights. Members shall be entitled to one vote for each Living Unit in which the interest required for membership in the Association is held. In any decision to be made that includes the input of the Members (as provided for in Article II, Paragraph 9 of the Association Bylaws), a vote of a quorum of the Members (in accordance with Article II, Paragraph 9 of the Association Bylaws) at any meeting of the Members is required to implement any decision. Any Member who is not current on his/her payment of monthly or special assessments to the Association may have his/her Voting Rights suspended by the Association at the Association's discretion for failure to pay any assessment.

3.03 Multiple Ownership Interests. In the event there is more than one Owner of a particular Living Unit, the vote relating to such Living Unit shall be exercised as such Owners may determine among themselves, but in no event shall more than one vote be cast with respect to any Living Unit. 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 entire vote attributable to the Living Unit concerned.

3.04 Record of Ownership. Every Owner shall promptly cause to be duly filed of record a copy of the conveyance document to him/her of his/her Living Unit with the secretary of the Association, who shall maintain a record of ownership of the Living Units. Any Owner who mortgages his Living Unit 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 record of ownership.

## ARTICLE IV - DUTIES AND POWERS OF THE ASSOCIATION

4.01 Duties of the Association. Without limiting any other duties, which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligations and duties 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 the Association.
- (c) The Association shall maintain, repair, and replace, the Common Areas in all phases (including the maintenance and resurfacing of all roadways and snow removal and maintenance of drainage facilities), and, at the discretion of the Board, any Property dedicated to any governmental authority and situated immediately adjacent to the Property if the Board determines that such dedicated Property is not being maintained or landscaped in a condition comparable to the Common Areas.
- (d) 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.
- (e) The Association shall obtain and maintain in force the policies of insurance required by Article IX of this Declaration.

4.02 Powers and Authority of the Association. The Association Board shall have all the powers set forth in its Articles of Incorporation, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, the Utah Condominium Ownership Act, the Utah Community Association Act, or any other applicable statute, 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 Board 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 Living Unit for the purpose of inspecting, maintaining and repairing such Living Unit or any improvement thereon if for any reason the Owner fails to maintain and repair such Living Unit or improvement, or for the purpose of removing any improvement or structural change/alteration constructed, reconstructed, refinished, altered or maintained upon such Living Unit in violation of Article VIII of this Declaration. 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 or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(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 Living Units (to the extent necessitated by the failure of the Owners of such Living Units) or in exercising any of its rights to construct 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 not 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 otherwise provide for:

(1) Maintenance, repair and replacement of all roadways and appurtenant improvements, including the removal of snow thereon, on such terms and conditions as the Board shall deem appropriate;

(2) Construction, maintenance, repair and landscaping of the Common Areas, including all surface run-off, drainage and detention facilities, on such terms and conditions as the Board shall deem appropriate;

(3) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board, the members of the Design Committee and the Owners;

(4) Such utility services, including (without limitation) culinary water, secondary water, sewer, trash removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;

(5) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(6) 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

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

(c) The Board may delegate any of its powers under this Declaration

to a Managing Agent or a Committee, including a Design Committee; provided, however, that the Board cannot delegate to such Managing Agent or Committee the power to execute any contract binding on the Association for a sum in excess of \$5,000 nor the power to sell, convey, mortgage or encumber any Common Areas.

(d) The Association Board shall have the power and authority to hire a responsible corporation, partnership, firm, person or other entity, to maintain the grounds of an owner's Living Unit should an Owner fail to do so. The cost to maintain a Living Unit shall be charged to the Owner of the Living Unit and may be included in the monthly assessment to the Owner.

4.03 Association Rules. The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, 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) signs; (f) parking; and (g) other matters concerning the use and enjoyment of the Property and the conduct of residents, including minimum standards of property maintenance consistent with this Declaration.

4.04 Fines. In addition to the rules and regulations governing the items mentioned in Section 4.03 above, the Board may also adopt, amend and repeal fines related to any Owner's (or the Owner's guest, or other invitee) failure to abide by said rules and regulations. The Board may add the fines to the monthly assessments provided for in Section 5.01 below, and those amounts will become a continuing lien upon the Owner's Living Unit.

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

## ARTICLE V - ASSESSMENTS

5.01 Personal Obligation and Lien. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Living Unit, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Living Unit with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Living Unit at the time the assessment falls due. No Owner may exempt himself or his Living Unit from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Living Unit. In a voluntary conveyance of a Living Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid monthly and special assessments,

late payment fees, interest and costs of collection which shall be a charge on the Living Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.02 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvements of the Common Areas; management and supervision of the Common Areas; establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance, repairs and replacement of those elements of the Common Areas that must be maintained, repairs or replaced on a periodic basis.

5.03 Monthly Assessments. The Board shall from time to time and in its discretion set the amount of the monthly assessment in an amount reasonably estimated by the Board to be sufficient to meet the obligations imposed by this Declaration and on the basis specified in Section 5.07 below.

5.04 Special Assessments. From and after the date set under Section 5.08 of this Article, the Association may levy special assessments in addition to monthly assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments, or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas. Any such special assessment must be assented to by a majority (51%) of the votes of the membership, which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

5.05 Quorum Requirements. The quorum at any meeting required for any action authorized by Section 5.04 above shall be as follows: At the first meeting called, the presence of Owners or of proxies entitled to cast fifty percent (50%) of all of the votes of the Owners shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 5.04, i.e., notice must be in writing and sent to all of the Owners at least ten (10) days but not more than thirty (30) days prior to the meeting) at which a quorum shall be one-half (twenty five percent (25%)) of the quorum that was required at the immediately preceding meeting. No such subsequent

meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

**5.06 Special Assessment on Specific Living Units.** In addition to the monthly assessment and any special assessment authorized pursuant to Section 5.04 above, the Board may levy at any time special assessments (a) on every Living Unit especially 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 Living Unit to be charged, (b) on every Living Unit the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs, and (c) on any Living Unit as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 4.02(a) of Article IV or other provisions of this Declaration. The aggregate amount of any such special assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Living Units according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. 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 special assessment against the Living Units benefited.

**5.07 Uniform Rate of Assessment.** All monthly and special assessments authorized by Section 5.03 or 5.04 above shall be fixed at a uniform rate for all Living Units, regardless of ownership or whether or not the Living Units are improved with living Units. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Living Units adversely affected.

**5.08 Monthly Assessment Due Dates.** The monthly assessments provided for herein shall be due on the first day of each month, and shall be deemed late ten (10) days after it is due. At least fifteen (15) days prior to the effective date of any change in the amount of monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

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

**5.10 Effect of Nonpayment Remedies.** Any assessment not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Living Unit. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the Board may assess a late fee in the Board's

discretion, and the unpaid amount thereof, including any late fees, shall bear interest from the due date at the rate of two percent (2%) per month; and the Association may record a Notice of Lien against the Living Unit of the Owner who is behind in his/her payments or bring an action against the Owner who is personally liable or may foreclose its lien against the Living Unit, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

5.11 Priority of Lien to Mortgages. The lien of the assessments provided herein shall be treated under the Utah Condominium Ownership Act, Section 57-8-1, et seq., and shall not be subordinate to the lien of any first Mortgage to a bank, savings and loan association, insurance company or other institutional lender where the lien of the assessments was recorded prior in time to the first Mortgage and therefore has priority over the first Mortgage; and the holder of any such first Mortgage or purchaser who comes into possession of a Living Unit by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such mortgage, or by deed in lieu of foreclosure, shall only take free of such assessment lien as to any assessment which accretes or becomes due prior to the time such holder or purchaser takes possession of such Living Unit if said first Mortgage was recorded prior to the assessment lien in the Utah County Recorder's Office; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Living Unit from the lien of any assessment thereafter becoming due.

#### ARTICLE VI - PROPERTY RIGHTS AND CONVEYANCES

6.01 Easement Concerning Common Areas. Each Owner shall have a nonexclusive 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 Living Unit and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, contract purchaser, or other person who resides on such owner's Living Unit. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others.

6.02 Form of Conveyancing. Any deed, mortgage, deed of trust, or other instrument conveying or encumbering title to a Living Unit shall describe the interest or estate involved substantially as follows:

Unit No. \_\_\_\_ of the Robbins' Rosewood Estates Plat "C," according to the Official Plat thereof recorded in the Utah County Recorder's Office.

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 Living Unit.

6.03 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to govern by rules and regulations the use of the Common Areas for the Owners so as to provide for the enjoyment of the Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Living Units by every Owner, including the right of the Association to impose reasonable user charges for the use of facilities (other than open areas) within the Common Areas and reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;

(b) The right of the Association to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Owner's Living Unit remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Board;

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

6.04 Reservation of Access and Utility Easements. The Association reserves easements for access, electrical, gas, communications, cable television and other utility purposes and for sewer, drainage and water facilities, (whether servicing the Property or other premises or both) over, under, along, across and through the Property, together with the right to grant to the Association, the City of Payson, or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof.

6.05 Easements for Encroachments. If any part of the Common Areas as improved by the Association now or hereafter encroaches upon any Living Unit or if any structure constructed by the original builder on any Living Unit now or hereafter encroaches upon any other Living Unit or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Living Unit shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Living Unit or upon any portion of the Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

6.06 Easements for Construction, Development and Maintenance Activities. The Association reserves for itself easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) improvement of the Common Areas and construction, installation and maintenance thereon or roads, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, (b) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roads, walkways, and other facilities, planned for dedication to appropriate governmental authorities, and (c) maintenance of the Property or any improvement thereon, if any.

#### ARTICLE VII - USE RESTRICTIONS

7.01 Retirement Single Family Residence. Each Living Unit shall be used as a retirement residence for a single family and for no other purpose. Retirement refers to an age restriction of 55 years of age of one member of the household. No person under the age of 55 shall reside in any Living Unit unless and until said person has obtained permission from the Association Board and the Board has given its approval.

7.02 Business or Commercial Activity. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes; excepting professional and administrative occupations without external evidence thereof, for so long as such occupations are in conformance with Payson City ordinances and are merely incidental to the use of the Living Unit as a residential home.

7.03 Nuisances. No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Living Unit or the Common Area, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. No loud noises or noxious odors shall be

permitted on the Property, and the Board shall have the right to determine in accordance with the By-Laws if any noise, odor or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Owner in the Property, shall be located, used or placed on any portion of the Property, or exposed to the view of other Owners without the prior written approval of the Board or the Design Committee established by the Board.

7.04 Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property or any Living Unit, without the prior written consent of the Board, except one sign for each living Unit, of not more than three (3) feet by two (2) feet, plain white with black block letters, advertising the property for sale, or except signs, regardless of size, used by a licensed realtor, to advertise any living Unit for sale. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of the Payson City ordinances.

7.05 Parking and Vehicular Restrictions. No Owner of a Living Unit shall park, store or keep any vehicle except wholly within the parking area designated therefor, and no inoperable vehicle shall be stored on the Property. No Owner shall park, store or keep on any part of the Property or street (public or private) within the Property any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck and any other vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board) or any recreational vehicle (camper unit, motor horse, truck trailer, boat, mobile home or other similar vehicle)(except as otherwise provided by the Board). The above excludes camper trucks up to and including three-quarter (3/4) ton when used for everyday-type transportation and subject to approval by the Board of Directors. No Owner of a Living Unit shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Living Unit or upon the Common Area. No inoperable vehicle or junk or dilapidated vehicle or unregistered vehicle or uninsured vehicle shall be kept, stored or placed or left in any parking area, common area, limited common area, Living Unit area or on any street within or surrounding any such area. No guest, family, or other invitee of an Owner or an Owner's tenant may park in any area other than the Owner's parking space(s) or the parking spaces designated as guest parking spaces.

7.06 Animal Restriction, Garden Restriction. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept in any Living Unit or the Common Area, except usual and ordinary dogs, cats, fish, birds and other household pets may be kept on Living Units subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Association (or the Design Committee or such

other person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Property must be either kept inside the residential structure (not on the patio) of that owner, or, if temporarily outside the structure, on a leash being held by a person capable of controlling the animal. Should any animal belonging to an Owner be found unattended out of the residential structure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by The Association (for so long as it owns any interest in the Property) or a person designated by The Association to do so, or by any person authorized by the Association, to a pound under the jurisdiction of the local municipality in which the Property are situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely and strictly liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Area. No garden shall be kept, raised, installed or maintained in any common area, limited common area or Living Unit area without the approval of the Board.

7.07 Trash. No rubbish, trash or garbage or other waste material (including dog waste) shall be kept or permitted upon any Living Unit or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor and fire pits in the patios designed in such a manner that they do not create a fire hazard. No clothing or household fabrics shall be hung, dried or aired in such a way in the Property as to be visible to other property, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property except within an enclosed structure or appropriately screened from view.

7.08 View Obstructions. No fence, hedge, wall or other dividing instrumentality over six feet (6') in height measured from the ground on which it stands shall be constructed or maintained on any Living Unit, except that the Association may vary or exceed said height or location of any fence in accordance with its architectural plans. Each Owner by accepting a deed to a Living Unit hereby acknowledges that any construction by the Association may impair the view of such Owner and hereby consents to such impairment.

7.09 Temporary or Permanent Outbuildings. No outbuilding, basement, tent, shack, shed, storage unit or other temporary building or improvement of any kind shall be placed

upon any portion of the Property either temporarily or permanently. No garage, trailer, camper, motor home or recreation vehicle shall be used as a residence in the Property, either temporarily or permanently.

7.10 Common Area Facilities. Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Association.

7.11 Outside Installations. No radio station or shortwave operators of any kind shall operate from any Living Unit of Living Unit unless approved by the Board. Exterior radio antenna, television antenna, or other antenna may be erected or maintained in the Property, subject to the approval of the Board.

7.12 Insurance Rates. Nothing shall be done or kept in the Property which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Property which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

7.13 Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted upon or in any Living Unit, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Living Unit or within five hundred feet (500') below the surface of the Property. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Living Unit.

7.14 Further Subdivision. No Owner shall further partition or subdivide his Living Unit; provided however, that this provision shall not be construed to limit the right of an Owner (1) to sell his Living Unit; or (2) to transfer or sell any Living Unit to more than one person to be held by them as tenants-in common, joint tenants, tenants by the entirety or as community property.

7.15 Drainage. There shall be no interference with the established drainage pattern over any Subdivision within the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Board. For the purposes hereof, "established" drainage is defined as the drainage which existed at the time the overall grading of the Property was completed by the original contractor, or that which is shown on any plans approved by the Board, which may include drainage from the Common Area over any Living Unit or Living Units in the Property.

7.16 Water Supply Systems. No individual water supply, sewage disposal system, or water softener system shall be permitted in any Living Unit in the Property unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Utah County Health Department, the Board, and all other applicable governmental authorities.

7.17 No Renting. Pursuant to a vote of the Owners, the Covenants are hereby amended so that from this day forward, only owner occupants may live in any Living Unit. Owner-occupied shall mean that the owner or owners of record or the immediate family of the same (lawful spouse, father, mother, child or children, brother(s) or sister(s)) reside in and designate the Living Unit as their primary residence. No Owner may rent or lease any Living Unit to any third party who is not a member of their immediate family. If an Owner determines that they are no longer going to occupy a Living Unit, the Owner must sell the Living Unit or leave it vacant. Because notice of a change such as this one must be prospective to comport with the due process requirements of the Constitutions of the United States and the State of Utah, Owners who are currently leasing their Living Unit to a third party non-family member will be "grandfathered" and excepted from this rule. However, upon the sale or other transfer by one of these "grandfathered" Owners to a new Owner, the new Owner will be subject to these requirements and may not lease the Living Unit to a third party non-family member. Upon receiving notice of any violation of this covenant, the Board may initiate legal proceedings to enforce this covenant against any Owner who is not "grandfathered," and the prevailing party in any resulting litigation will be entitled to reimbursement of all of its attorneys fees and costs from the losing party.

## ARTICLE VIII - ARCHITECTURAL CONTROL

8.01 Organization of the Design Committee. There shall be a Design Committee consisting of the members of the Board.

8.02 Actions Requiring Approval. No fence, wall, accessory (including holiday decorations, screen doors, wind chimes, hanging baskets, hot tubs, etc.), addition, change, or alteration to a Living Unit visible from the Common Areas or public streets within the Property, or landscaping (including trees, shrubs, bushes, flowers, etc.) or other improvement of a Living Unit visible from the Common Areas or public streets within the Property shall be constructed, performed or added, nor shall any alteration of any structure on any Living Unit, including a change in exterior color, be made, unless complete plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall first be submitted to and approved by the Board.

8.03 Standard of Board Review. Before granting any approval of plans and specifications, the Board shall determine to its reasonable satisfaction that such plans and specifications (a) conform to all architectural standards contained in this Declaration and all further architectural standards promulgated from time to time by the Board and (b) provide for a structure, alteration, landscaping or other improvements in harmony as to external design and location with surrounding structures and topography.

8.04 Design Committee Rules and Architectural Standards. The Board may adopt and file as a matter of public record reasonable rules related to the efficient review of plans and specifications including requirements as to the number of sets of

plans and specifications to be submitted, the fixing of a review or variance request fee not exceeding Fifty Dollars (\$50.00) per review or variance request, the details to be shown on plans and specifications, and design guidelines consistent with this Declaration and covering such matters as setbacks, height limitations, restrictions on minimum or maximum size and quality of structures

8.05 Approval Procedure. The Board and any subcommittees thereof shall meet front time to time as necessary to perform the duties of the Board. The vote or written consent of a majority of the Board or any authorized subcommittee shall constitute the act of the Board. Any plans and specifications submitted to the Board shall be approved or disapproved within thirty (30) days after receipt by the Board. If the Board fails to take action within such period, the plans and specifications shall be deemed to be approved as submitted.

8.06 Variance Procedure. If plans and specifications submitted to the Board are disapproved because such plans and specifications are not in conformity with applicable architectural standards, the party or parties making such submission may submit a request for variance to the Board, which shall make a written recommendation of approval or disapproval of the requested variance to the Board. The Board shall approve or disapprove the request for variance in writing. If the Board fails to approve or disapprove a request for variance within sixty (60) days after such request is submitted to the Board, such request shall be deemed to be approved.

8.07 Nonwaiver. The approval by the Board of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Board to disapprove any similar plans and specifications.

8.08 Completion of Construction. Once begun, any improvements, construction, landscaping or alterations approved by the Board shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Board.

8.09 Exemption of the Association. The provisions of this Article shall not apply to any improvement, construction, landscaping or alteration made or performed by the Association on any Living Unit or portions of the Common Areas at any time.

8.10 Estoppel Certificate. Within thirty (30) days after written demand therefor is delivered to the Board by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Board, the Board shall issue an estoppel certificate in recordable form executed by any two of its members, certifying with respect to any Living Unit of such Owner that as of the date thereof either (a) all improvements and other work made or done upon or within such Living Unit by the Owner, or otherwise, comply with This Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also (i) identify the nonconforming improvements or work, and (ii) set forth the nature of such noncompliance. Any mortgagee or purchaser from the Owner shall be entitled to rely on such certificate with respect to the matters therein set forth.

8.11 Disclaimer of Liability. Neither the Board, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

#### ARTICLE IX - MAINTENANCE AND REPAIR OBLIGATIONS

9.01 Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in Article IX, Section 9.03, of this Declaration, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Board approval, to maintain, repair, replace and restore areas subject to his exclusive control, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Owner shall be deemed to include, but not be limited to, the interior and all glass portions of the Owner's Living Unit and the patio area on that individual Owner's Living Unit. In addition to decorating and keeping the interior and exterior of the Owner's Living Unit in good repair, each Owner shall be responsible for the maintenance and/or replacement of any plumbing fixtures, refrigerators, heating equipment and blowers, dishwashers, disposals, ranges, washers, dryers and barbeques that may be in or connected with the Living Unit. Owners are responsible to maintain existing flowerbeds, shrubs located directly in front of and in back of Living Unit. In the event that any Owner shall permit any improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Board shall have the right, but not the duty, upon fifteen (15) days' prior written notice to the Owner of such Living Unit, to correct such condition and to enter upon such Owner's Living Unit to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said cost shall be a special assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board of Directors, to the amounts payable by each Owner as monthly assessments. If an Owner (or the Owner's family, tenant, guest, or other invitee) damages any portion of the Common Area or any improvements located on the Common Area or any Living Unit, the Owner shall be responsible to repair or pay to repair any damage or pay for any replacement.

9.02 Maintenance Obligations of Association. Subject to the provisions of Section 9.01 of this Article, the Association shall maintain, or provide for the maintenance of all of the Common Area and all improvements thereon in good order and repair, and shall likewise provide for the painting and minor repair and replacement as necessary of the Structural Maintenance Areas, commonly metered utilities, and any and all utility laterals and buildings. In addition to building maintenance, the Association shall provide all

necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Area at the time that it is conveyed to the Association and on an Owner's Living Unit up to the foundation lines of the residential dwelling and up to the fences surrounding the enclosed patio areas. The Association shall further maintain, reconstruct, replace, refinish, and paint any paved surface in the Common Area. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Directors of the Association shall determine in their judgment to be appropriate. The Association shall also maintain and keep in good state of repair, any fence located along the edge of any public street contiguous to the Property or on the perimeter of the Property. The Association may contract with any Owner to fulfill the maintenance obligations of the Association, provided that (1) the Owner must meet any licensing requirements of any governmental entity to provide said maintenance, if any, and (2) the Association must obtain at least one (1) bid from another individual or company with no connection to the Association. If the Association determines that the Owner's bid is competitive and that the Owner will provide maintenance of the same or better quality than any outside bidder, the Association may hire the Owner to provide the required maintenance.

9.03 Damage and Destruction Affecting Residences-Duty to Rebuild. If all or any portion of any Living Unit or Living Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Living Unit or Living Unit to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

9.04 Variance in Exterior Appearance and Design. Any Owner who has suffered damage may apply for approval to the Board for reconstruction, rebuilding or repair of his residence in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Board shall grant such approval only if the design proposed by the Owner should result in a finished residence in harmony with exterior design of other residences on the Property. Failure of the Board to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes shall constitute approval thereof. If the obligation for repair falls upon the Association, Board approval will not be required prior to the commencement of such work.

9.05 Time Limitation. The Owner or Owners of any damaged residence, the Association and the Board shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control.

## ARTICLE X - INSURANCE

**10.01 Liability Insurance.** The Board shall procure and maintain from a company or companies holding a rating of "AA" or better from Best's Insurance Reports a policy or policies (herein called "the Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the City of Payson nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled by the insurer unless it gives at least thirty (30) days prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

**10.02 Additional Insurance; Further General Requirements.** The Board may also procure insurance which shall insure the Common Areas and the Association, the Board, the Managing Agent or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide: (a) a waiver of the insurer's rights of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants; (h) that it cannot be cancelled, suspended or invalidated, due to the conduct of any particular Owner or Owners; (c) that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or any directors, officer, agent, or employee of the Association without a prior written demand that the defect can be cured and (d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

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

**10.04 Living Units Not Insured by Association.** The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other

insurance covering any Living Unit and Acts and events thereon.

10.05 Insurance Obligations of Owners. Each Owner shall insure his entire Living Unit, including the structural portions of the Living Unit, against loss or damage by fire or by any other casualty, under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by any Mortgagee of the residence. All such insurance shall be for the full replacement value of the Living Unit. Each non-participating Owner shall, within at least ten (10) days prior to the expiration, termination, cancellation or modification of any existing policy, furnish to the Association Board duplicate copies of policies or certificates thereof, showing that such insurance is currently in force certified by the insurance company or by its duly authorized agent. If any Owner fails to obtain or maintain a policy of insurance, the Association Board may obtain insurance on behalf of the Owner and bill the cost of the insurance to the Owner. All such policies shall contain a provision that the same shall not be canceled or terminated except upon at least thirty (30) days' written notice to the Association Board.

10.06 Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area facilities, or other Improvements in the Property insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XI of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damaged or destroyed, the Association may make a special assessment against all Living Unit Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds. In addition to any other monthly assessments made against such Living Unit Owners, in accordance with the provisions of Article V, Section 5.04, of this Declaration. In the event of total destruction of all of the Improvements in the Property, the proceeds of the insurance carried by the Association shall be divided proportionately among the Living Unit Owners, such proportion based upon the original base sales price of each improved Living Unit at the time it was initially sold by The Association, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Living Unit is so encumbered.

10.07 Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager The Association, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

10.08 Fidelity Coverage. The Association shall obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the

Living Unit Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

10.09 Other Insurance and General. The Association may also obtain, through the Board, Workers Compensation Insurance and other liability insurance as it may deem desirable, insuring each Living Unit Owner and the Association, Board of Directors and Manager, from liability in connection with the Common Area, the premiums for which are common expenses included in the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Living Unit Owner because of the negligent acts of the Association or other dwelling unit owners. All policies shall be reviewed at least annually by the Board of Directors and the limits increased at its discretion. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability and bonds and other insurance meeting the requirements for planned unit developments established by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corporation (PHI AC), so long as there are any mortgages on any of the properties.

#### ARTICLE XI - CONDEMNATION

11.01 If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Board and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Board which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Living Unit is eliminated, the Board shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Living Unit in the Association and the Common Areas to such Owner and any first mortgagee of such Living Unit, as their interests shall appear, after deducting the proportionate share of said Living Unit in the cost of debris removal.

#### ARTICLE XII - MISCELLANEOUS

12.01 Notices. Any notice required or permitted to be given to any Owner

under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the managing Agent or the President of the Association. Any notice required or permitted to be given to the Board may be given by delivering or mailing the same to the Managing Agent or any member of the Board.

12.02 Amendment. Except as provided in Section 12.01 and 12.02 of Article XII or in Section 13.07 of Article XIII, this Declaration may be amended by:

- (a) the affirmative vote of a majority of the Owners, and
- (b) the filing of an instrument for record in the office of the County recorder of Utah County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of a majority of the Owners and, if required, has the written consent of The Association.

Additionally, any amendment to this Declaration or change to this Planned Residential Unit Development which may require either an amendment to the Final Development Plan or Conditional Use Permit previously issued by Payson City in connection with the development of this Planned Residential Unit Development shall require the written approval of Payson City.

12.03 Consent in Lieu of Vote. 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 Owners, whether 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 Owners entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 12.03:

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.
- (b) The total number of votes required for the applicable authorization or approval 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 Living Unit which occurs after a 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 increase the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or

(d) Unless the consent of all Owners whose memberships are appurtenant to the same Living Unit are secured, the consent of none of such Owners shall be effective,

12.04 The Association's Rights Assignable. All or any portion of the rights of The Association under this Declaration or in any way relating to the Property may be assigned.

12.05 Interpretation. The captions preceding the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision herein is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

12.06 Covenants to Run With The Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and all inure to the benefit of The Association, the Owners, all parties who hereafter acquire any interest in a Living Unit and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Living Unit or Living Unit shall comply with, and all interests in all Living Units 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. By acquiring any interest in a Living Unit 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.

12.07 Duration. The covenants and restrictions of this Declaration shall remain in effect until twenty (20) years from the date this Declaration was first filed in the office of the County Recorder of Utah County, Utah, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument filed in the office of the County Recorder, approved and adopted by the Payson City governing body and executed by any two (2) officers of the Association, certifying that the Owners of at least a majority of the Living Units voted in favor of such termination. If any of the privileges, covenants, or rights created by this Declaration would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then the provision herein creating such privilege, covenant or right shall, in any event, terminate upon the expiration of twenty one (21) years after the death of the last survivor of the now living lawful descendants of George W. Bush, the



beginning.

Beginning at a point which is located West 621.23 feet and South 194.11 feet from the East  $\frac{1}{4}$  corner of Section 9, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence South  $03^{\circ}41'12''$  East 290.79 feet; thence North  $86^{\circ}16'47''$  East 196.72 feet; thence North  $05^{\circ}22'21''$  West 207.51 feet; thence North  $70^{\circ}06'45''$  West 208.16 feet to the point of beginning.

**PLAT "C":**

Commencing at a point which is located West 425.49 feet and South 264.92 feet from the East  $\frac{1}{4}$  corner of Section 9, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence running North  $70^{\circ}06'45''$  West 174.33 feet; thence South  $03^{\circ}43'12''$  East 265.24 feet; thence North  $86^{\circ}16'47''$  East 153.72 feet; thence North  $05^{\circ}22'21''$  West 207.51 feet to the point of beginning.

**TAX IDENTIFICATION NUMBERS:**

51-310-0001; 51-310-0002; 51-310-0003; 51-310-0004; 51-310-0005; 51-310-0006;  
51-310-0007; 51-310-0008; 51-310-0011; 51-310-0012; 51-310-0013; 51-310-0014;  
51-310-0015; 51-310-0016; 51-310-0017; 51-310-0018; 51-310-0019;

51-348-0019; 51-348-0020; 51-348-0021; 51-348-0022; 51-348-0023