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RANDALL A. COVINGTON  
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***DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR  
HERITAGE VILLAGE  
(A Planned Unit Residential Development)***

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THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HERITAGE VILLAGE, A Planned Unit Residential Village (the "Declaration") made and executed this 7 day of ~~October~~, 2008, by PACIFIC DEVELOPMENT, LLC, a Utah limited liability company (the "Declarant"). ~~MAY~~

**RECITALS**

WHEREAS, Declarant is the owner of certain real property situated in the City of Payson, Utah County, State of Utah, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference;

WHEREAS, Declarant intends to develop the real property as a planned residential development known and to be known as Heritage Village, a Planned Unit Residential Development (referred to herein as the "Project");

WHEREAS, Declarant desires to provide for the preservation of values and amenities within the Project and for the maintenance of roadways, parking spaces, landscaped areas, open spaces, and any other Common Areas or facilities to be developed as part of the Project; and to this end desires to subject the real property to the covenants, conditions, restrictions, uses, limitations, obligations, servitudes, easements, charges, liens, and other provisions (herein all together called "covenants and restrictions") set forth in this Declaration, each and all of which is and are for the benefit of the real property and the subsequent owners thereof;

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in the Project to create an Association to which will be delegated and assigned the powers and duties of maintaining and administering said Common Areas, administering and enforcing the provisions of this Declaration, and disbursing the charges and assessments herein created;

WHEREAS, Declarant has caused to be formed Heritage Village Homeowners Association, LLC, a Utah Limited Liability Company (the "Association"), for the purposes of carrying out the aforesaid powers, duties, and obligations; and

WHEREAS, Declarant has constructed, or is in the process of constructin, upon said real property certain Living Units and other improvements. All of such construction has been, or is to be, performed in accordance with the plans and drawings contained in the Plat Map filed for record herewith, prepared and certified by David Thomas, Utah State Registered Land Surveyor, Certificate No. 163947.

WHEREAS, Declarant intends to develop the property as an active adult community of individuals 55 and over. Said Community shall be constructed, marketed, managed and maintained in accordance with the provisions of the Federal Fair Housing Act, and all regulations promulgated there-under, including but not limited to the provisions of 24 CRF 100.305, 100.306 and 100.307 that provide in pertinent part that at least 80% of the occupied units must be occupied by at least one person 55 years of age and older; that the project will be advertised and promoted exclusively as an "adult community" or the like; and that the housing community shall establish a reasonable means of verifying age and compliance with the Federal Fair Housing Act. Said rules and regulations that are applicable to the Federal Fair Housing Act and are incorporated into these CCR's by reference shall be distributed to all first time buyers in the Property along with the CCR's.

NOW, THEREFORE, Declarant hereby declares that the real property is and shall be held, conveyed, hypothecated or encumbered, sold leased, rented, used , occupied, and improved subject to the covenants and restrictions hereinafter set forth, all of which are declared and agreed shall be in aid of the Project's plan of development; shall protect the value of the real property and the improvements comprising the Project; shall run with and bind the real property and all persons having any right, title, or interest therein, their heirs, successors and assigns, the Association, and any person owning or acquiring an interest in the real property.

**DECLARATION**

**ARTICLE I**  
**DEFININTIONS**

When used in this Declaration (including that portion hereof captioned "RECITALS") each of the following terms shall have the meaning indicated:

1. **Assessment** shall mean an Assessment levied to offset certain common expenses and/or special expenses as the context so specifies.
  
2. **Association** shall mean Heritage Village Homeowners Association, LLC, a Utah Limited Liability Company, its successors and assigns.

3. **Board or Board of Trustees** shall mean the Governing Board of the Association.
4. **Bylaws** shall mean the Bylaws of the Association, as amended from time to time, attached hereto as Exhibit "C" and incorporated herein by this reference.
5. **Common Areas** shall mean all portions of the Development except the Lots, and shall include all property owned by the Association for the common use and enjoyment of the Owners such as all undedicated roads or streets, unassigned parking spaces, sidewalks, walkways, landscaped areas, open spaces, and the like, together with all easements appurtenant thereto, whether or not expressly listed herein or on the Plat Map.
6. **Declarant** shall mean Pacific Development, LLC, a Utah limited liability company, its successors and assigns.
7. **Declaration** shall mean this Declaration of Covenants, Conditions, and Restrictions for Heritage Village, a Planned Unit Residential Development, as the same may be amended or supplemented.
8. **Development** shall mean Heritage Village, a Planned Unit Residential Development, as it exists at any given time.
9. **Limited Common Areas** shall mean any Common Areas designated for exclusive use by the Owner of a particular Unit. Limited Common Areas that are identified in this Declaration or on the Plat Map shall be Limited Common Area for the exclusive use of the Owner of the Unit indicated, such as, but not limited to, private driveways and private yards.
10. **Living Unit or Unit** shall mean a structure which is designated and intended for use and occupancy as a personal residence, together with all improvements located on the same Lot and used in conjunction with such residence.
11. **Unit Owner or 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, State of Utah) of a fee or undivided fee interest in any Unit, which is a part of the Development, including contract buyers. 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. Declarant shall be an Owner with respect to each Unit owned by it.
12. **Manager** shall mean any person or entity appointed or employed as a Manager by the Association.

13. **Member** shall mean a member of the Association.
14. **Mortgage** shall mean any mortgage, deed of trust or trust deed, or other security instrument by which the Unit or any part thereof is encumbered.
15. **Mortgagee** shall mean and include any person named as a mortgagee or beneficiary under a recorded Mortgage as defined above.
16. **Occupant(s)** shall mean any person for whom a living unit or unit is his or her primary residence. At least one occupant of each living unit or unit must be at least 55 years of age or older.
17. **Officer or Officers** shall mean an officer or officers of the Association.
18. **Plat or Plat Map** shall mean and refer to Plats A through B of the Heritage Village, a Planned Unit Residential Development, Payson, Utah, and by reference made a part hereof, as recorded at the Utah County Recorder's Office, State of Utah, as may be amended or supplemented.
19. **Project** shall mean Heritage Village, a Planned Unit Residential Development, as it may exist at any given time.
20. **Property** shall mean all land covered by this Declaration, including Common Areas, Limited Common Areas, and Living Units, and shall consist of the land described in ARTICLE II hereof.
21. **Reimbursement Assessment** shall mean a charge against a particular Owner and his Unit for the purpose of reimbursing the Association for costs incurred in bringing the Owner and his Unit into compliance with the provisions of this Declaration, the Bylaws, the rules and regulations of the Association, or any other charge designated as a Reimbursement Assessment in this Declaration, the Bylaws, or the rules and regulations of the Association, together with costs, interest, attorney's fees, and other charges payable by such Owner, pursuant to the provisions of this Declaration.

## **ARTICLE II**

### **SUBMISSION OF PROPERTY; PROPERTY DESCRIPTION; ANNEXATION**

1. **Submission of Property.** The property described in Exhibit "A" is to be subject to the provisions of this Declaration, and shall be held, transferred, sold, conveyed, and assigned subject to the provisions herein.

2. **Annexation.** Additional land within the area described in Exhibit "B" attached hereto may be annexed by the Declarant or the owner thereof without the consent of the Members within ten (10) years from the date of recording this Declaration at the Office of the Utah County Recorder, State of Utah. In that event, each Owner of any Unit contained in the additional land annexed pursuant to the terms herein shall become a Member of the Association and all Common Areas and Limited Common Areas in such annexed property shall be governed by this Declaration as if included in the property description in ARTICLE II, Section 1 above. If the Project is not expanded within ten (10) years, this expandable option shall expire. No assurances are made as to the location of any buildings or improvements that may be made on any portions of the additional land annexed to the Project. No assurances are made as to the number of Units to be constructed on any portion of the additional land added to the Project. No assurances are made as to the extent to which any structure erected on any portion of the additional land added to the Project will be compatible with structures on the land originally within the Project in terms of quality of construction, principle materials used, or architectural style. No assurances are made as to the location or description of any improvements to be made on any portion of the land to be annexed to the Project. No assurances are made as to whether any Unit created on any portion of the additional land added to the Project will be substantially identical to Units on the land originally within the Project. No assurances are made as to the Declarant agreeing to create Limited Common Areas and facilities (in terms of the types, sizes, and maximum number) within any portion of the additional land added to the Project. Any annexed land is restricted exclusively to residential use.

A. Plat A shall have fifty-one (51) Units, which will give each Unit Owner approximately an undivided 1.96078% interest in all Common Areas.

B. When annexed, Plat B is anticipated to have forty-seven (47) Units, which will make a total number of Units in Plat A and Plat B of ninety-eight (98), which will then give each Unit Owner approximately an undivided 1.0204% interest in all Common Areas.

C. The above number of Units to be built should be adequate to reasonably support the Common Areas and facilities in each Plat. The number of Units to be built should not overload the capacity of the Common Areas and facilities in any Plat.

D. If annexation occurs, all land within each Plat as described in Exhibit "B" shall be annexed at one time.

3. **No Obligation to Annex or Develop.** Declarant has no obligation hereunder to annex any additional land to the Project, or to develop or preserve any portion of additional land in any particular way or according to any particular time schedule.

**ARTICLE III**  
**NATURE AND INCIDENTS OF OWNERSHIP**

1. **Unit Title.** Title to a Unit may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.
2. **No Separation.** No part of a Unit, or of the legal rights comprising ownership of a Unit, may be separated from any other part thereof during the period of ownership described herein, so that each Unit and the undivided interest in the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy the Limited Common Areas appurtenant to each Unit, shall always be conveyed, devised, encumbered, and otherwise effected only together and may be never be separated from one another. Every gift, devise, bequest, transfer, encumbrance, or other disposition of a Unit, or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or this Declaration.
3. **Membership in Association.** Every Owner upon acquiring fee simple title to a Unit shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership of such Unit ceases for any reason, at which time his membership in the Association with respect to such 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 Unit.
4. **Undivided Interest in Common Areas.** Each Unit Owner shall have, for each Unit owned, a specified undivided fractional interest in and to the Common Areas equal to a fraction, the numerator of which is one and the denominator of which is the number of units in the project.
5. **Use of Common Areas and Limited Common Areas.** Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas designated herein and on the Plat Map, and shall have the exclusive right to use and enjoy the Limited Common Areas designated herein and on the Plat Map which appertain to a particular Unit.
6. **Partition.** The Common Areas shall be owned in common by all the Owners of Units as provided in this Declaration, and no Unit Owner may bring action for partition thereof, except as authorized by law.
7. **Duty of Owner to Pay Taxes on Unit Owned.** It is understood that each Unit (and its percentage of undivided interest in and to the Common Areas) in the Project is subject to

separate assessment and taxation of each taxing authority and special district which has such jurisdiction over the Project for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the Project as such. Accordingly, each Unit Owner shall promptly pay and discharge any and all taxes and assessments which may be assessed against such Owner relative to his Unit.

8. **Duty to Pay Association Assessments.** Each Unit Owner is obligated to promptly pay and discharge all Assessments and charges levied by the Association as set forth herein.

9. **Voting Rights.** The Association shall have the following described two (2) classes of voting membership:

**Class A.** Class A members shall be all Owners, but excluding the Declarant until the Class B membership ceases. Class A members shall be entitled to one (1) vote for each Unit in which the interest required for membership in the Association is held.

**Class B.** Declarant shall be the sole Class B member. The Class B member shall be entitled to three (3) votes for each Unit which it owns. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A members equals the total number of votes held by the Class B member; or

(b) The expiration of ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, State of Utah.

10. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves, but in no event shall more than one Class A vote be cast with respect to any Unit. A vote cast at any Association meeting by any such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Unit concerned unless an objection is made at the meeting by another Owner of the same Unit. Multiple record Owners of a single Unit shall be unanimous in their single vote for such Unit; otherwise such Unit shall not be represented by a vote.

11. **Record of Ownership.** Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of a contract buyer, a copy of the sales contract) to him of his Unit and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a Record of Ownership of the Units. Any Owner who



mortgages his 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.

12. **Exhibit "D"**. Exhibit "D" attached to this Declaration and made a part hereof furnishes the following information with respect to each Unit: (a) Unit number; (b) appurtenant undivided percentage ownership in the Common Areas; and (c) number of votes.

13. **Living Unit Maintenance**. Each Owner shall have the duty at his own cost and expense to maintain and keep in good order and repair and in a clean and sanitary condition his respective Living Unit.

14. **Maintenance of Limited Common Areas**. Each Owner shall keep the Limited Common Areas designated for use in connection with his Unit in a clean, sanitary, and attractive condition at all times.

15. **Occupant(s)**. At least one occupant of each living unit or unit must be at least 55 years of age or older.

**ARTICLE IV**  
**ASSOCIATION**

1. **Status and General Authority of Association**. The Project shall be managed, operated, and maintained by the Association of the Unit Owners. The Association, through its Board of Trustees and Officers, shall have the power to do any and all things which may be authorized, required, or permitted to be done under law and by virtue of this Declaration and Bylaws, including the power to levy and collect Assessments as hereinafter provided. Without limiting the generality of the foregoing, the Association shall have the following authorities and powers:

A. The authority, upon the necessary prior approval of the Unit Owners and Mortgagees (if required by the terms of their Mortgage), to grant or create on such reasonable terms as deemed advisable, utility and similar easements over, under, across, and through the Common Areas.

**B.** The authority to execute and record, on behalf of all Unit Owners, any Amendments to the Declaration or the Plat Map which have been approved by vote or consent of the Unit Owners necessary to authorize such Amendments as provided in this Declaration.

**C.** The power to sue and be sued.

**D.** The authority to enter into contracts relating to the Common Areas and other matters over which it has jurisdiction, so long as any vote or consent of the Unit Owners necessitated by the subject-matter of the agreement has been obtained.

**E.** The power and authority to convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances has been obtained, including that of any Mortgagee if required by the terms of its Mortgage.

**F.** The power and authority to purchase, or otherwise acquire, and accept title to, any interest in real property so long as such action has been authorized by the vote or consent which is necessary under the circumstances.

**G.** The power and authority to add any interest in real property obtained pursuant to Paragraph F above to the Project, so long as such action has been authorized by the necessary vote or consent.

**H.** The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out its function or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners. All such rules and regulations established by the Association shall be established in writing.

**I.** 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.

**J.** The Association shall obtain and maintain in force such policies of insurance required by the provisions of this Declaration, and such insurance policies or bonds as the Association may deem appropriate for the protection and benefit of the Declarant, the Association, the Owners, and any members, agents, or employees of the same.

**K.** To have the power and authority 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 Association, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

L. The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Association and the Unit Owners. Any instrument executed by the Association relating to the Common Areas of the Project that recites facts which, if true, would establish the Association's power and authority to accomplish thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

M. In fulfilling any of its duties under this Declaration, the Association shall have the power and authority to: (i) pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed in the fulfillment of any of its obligations and duties of maintenance, repair, operation, or administration; and (ii) obtain, contract, pay for, or otherwise provide for: (a) construction, maintenance, repair, and landscaping of the Common Areas on such terms and conditions as the Association shall deem appropriate; (b) such utility services, including (without limitation) water, sewer, trash removal, electrical, telephone, cable television, and natural gas services, as the Association may from time to time deem desirable; (c) the services of architects, engineers, attorneys, certified public accountants, and such other professional or nonprofessional services as the Association may deem desirable; (d) fire, police, and such other protection services as the Association may deem desirable for the benefit of the Owners; and (e) such materials, supplies, equipment, services, and labor as the Association may deem necessary.

**2. Composition of Association; Board of Trustees; Officers; Election; Vacancy.** The Association is comprised of all the Members/Unit Owners in the Project. The Board of Trustees of the Association shall be elected by and from the general membership of the Association as more specifically provided in the Bylaws. The Board of Trustees shall be composed of three (3) members from whom shall be elected the following Officers of the Association: President, Vice President, and Secretary/Treasurer. The Trustees shall be elected each year at the Annual Meeting of the Members of the Association, and each shall hold office for a period of one (1) year. Members shall serve as Trustees until their successors are elected. Only Unit Owners or spouses of Unit Owners, and officers, directors, or agents of Owners other than individuals, shall be eligible to hold the position of Trustee. At the Annual Meeting, each Unit Owner may vote his percentage of undivided ownership interest in favor of as many Trustee positions as there are to be filled (not to be construed as permitting cumulative voting); provided, however, that until the happening of the first of the following two (2) events, namely either: (a) one hundred twenty (120) days following which title to Units representing seventy-five percent (75%) of the votes of Unit Owners shall have been conveyed by Declarant to the purchasers thereof; or (b) the expiration of ten (10) years after the first conveyance of title to any Unit purchaser; the Declarant alone shall have the right to select the Board of Trustees or act as the Board of Trustees itself. However, Declarant may waive the right at any time prior to the occurrence of either or both of the aforesaid events by: (a) notifying Unit Owners in writing of such

waiver of the rights; and (b) filing for record in the office of the Utah County Recorder, State of Utah, a written notice of waiver of the right, whereupon Unit Owners shall promptly hold a meeting to elect a new Board of Trustees, it being established hereby that the control of the Unit Owners and the Board of Trustees shall automatically vest thirty (30) days following the date such waiver is recorded by Declarant. In the event a Trustee position which was filled by Declarant becomes vacant, Declarant shall have the right to select a replacement member to sit on the Board of Trustees for the balance of the term associated with the vacant position.

In all other cases of vacancy, the remaining Trustees shall elect a replacement to sit on the Board until the expiration of the term for which the Trustee being replaced was elected. Any Trustee who fails to attend at least twenty-five percent (25%) of all Board meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat.

**3. Rights and Duties.** The Association shall be responsible for the general management and administration of the Project. It is understood that the Association has the obligation to maintain the Common Areas of the Project.

**4. Maintenance of Common Areas.** The Association shall maintain, repair, replace, and landscape the Common Areas and improvements; it being understood and agreed that each Unit Owner shall maintain, repair, replace his respective Limited Common Areas and the improvements thereon.

**5. Right of Delegation to Manager.** The Association may carry out any of its functions which are capable of delegation through a Manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. All agreements between the Association and a Manager shall be in writing and previously approved by a majority of the votes of the Unit Owners.

**6. Payment of Services; Etc.** The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of its function in the Project. The Association may obtain and pay for the operation of the Project or the enforcement of this Declaration. It is recognized that the Association may arrange with other persons or entities to furnish snow removal, ground maintenance, and other common services to the Project, whether such personnel are furnished or employed directly by the Association. All agreements between the Association and other persons or entities for certain services shall be in writing and previously approved by a majority of the votes of the Unit Owners.

7. **Personal Property Ownership and Use.** The Association may acquire and hold for the use and the benefit of all the Owners tangible and intangible personal property, and any interest in such property as shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Common Areas. Such interests shall not be transferrable except with a transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property without reference thereto, and such beneficial interests may in no event be reserved by the transferor of a Unit. Each Owner may use such personal property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosure.

8. **Rules and Regulations.** The Association may make reasonable rules and regulations governing the operation and use of the Common Areas in other matters over which it has jurisdiction, which rules and regulations shall be consistent with the rights and duties established in this Declaration and the Bylaws. The Association may suspend any Owner's voting rights at the meeting of Unit Owners for periods during which such Owner fails to comply with the said rules and regulations, or with any other obligations of such Owner under this Declaration. In order to suspend an Owner's voting rights in any manner, the Association must first hold a hearing on the matter giving reasonable notice to the accused Owner and allowing him an opportunity to be heard. The Association must unanimously agree upon the decision to suspend an Owner's voting rights and all terms and conditions relating thereto. The Association may also take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations or to obtain damages for noncompliance, all to the extent provided by law.

9. **Capital Improvements.** There shall be no structural alterations, capital additions to, or capital improvements of the Common Areas without the prior approval of the Unit Owners holding the majority of the voting power.

10. **Extended Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

11. **Architectural Control.** The Association shall act in all manners pertaining to architectural control, and shall establish the rules and procedures for submitting plans for approval of any construction, alteration, remodeling, etc. involving the Project.

12. **Limitation of Liability and Indemnification of Trustees and Officers.** No Trustee or Officer of the Association 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 and its

representatives and employees. Each Trustee and Officer shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorney's fees reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a Trustee or Officer of said Association.

## **ARTICLE V** **ASSESSMENTS**

**1. Personal Liability and Lien.** Each Owner shall, by acquiring or in any way becoming vested with his interest in a Unit, be deemed to covenant and agree to pay to the Association the Assessments described in this ARTICLE V, together with interest, costs, and attorney's fees, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the 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 Unit at the time the Assessment becomes due. A lawsuit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may exempt himself or his Unit from liability for payment of Assessments by waiver of his rights in the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and separately liable with the grantor for all such unpaid Assessments, interest, costs, and attorney's fees which shall be a charge on the 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 therefor.

**2. 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 Development. The use made by the Association of funds obtained from Assessments may include payment of the cost of: (a) taxes and insurance on the Common Areas; (b) maintenance, repair, and improvements of the Common Areas; (c) establishment and funding of a reserve to cover major repair or replacement or improvement within the Common Areas; and (d) any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Bylaws.

**3. Basis of Assessments.** All Assessments shall be uniform in application. The total annual, monthly, or other periodic Assessments against the Units shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and/or the Project. The amount of the annual, monthly, or other periodic Assessments shall be previously approved by two-third's (2/3's) or more of the Unit Owners.

4. **Apportionment of Assessments.** Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among the Units in proportion to their respective undivided interest in the Common Areas assessable by the Association; provided, however, that for this purpose Declarant shall be deemed to own only the undivided interest in the Common Areas based upon Units which have been completed but not yet conveyed by Declarant.

5. **Notice and Payment of Assessments.** Assessments shall be made on a calendar year basis. The Association shall give written notice to each Owner as to the amount of the annual, monthly, or other periodic Assessment with respect to his Unit not less than thirty (30) days prior to the beginning of the next calendar year; provided, however, that the first annual, monthly, or other periodic Assessment shall be for the balance of the calendar year remaining after the day fixed by the Association as the date of commencement of the Assessment. Each annual, monthly, or other periodic Assessment shall be due and payable in full and in advance on or before the beginning of the year, month, or other designated period. Each Assessment shall earn interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within fifteen (15) days after such date. The first annual, monthly, or other periodic Assessment becomes due and payable upon the date the Unit Owner purchases his Unit, whether by conveyance of title or entering into a contract of sale and purchase, and thereafter each annual, monthly, or other periodic payment shall be due and payable in advance.

6. **Special Assessments.** In addition to the annual, monthly, or other periodic Assessments authorized hereunder, the Association may levy Special Assessments payable over such period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas of the Project or any other part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. Any amount assessed pursuant thereto shall be assessed to Owners in proportion to their respective undivided interest in and to the Common Areas. The amount of the Special Assessments shall be previously approved by two-third's (2/3's) or more of the Unit Owners. Notice in writing of the amount of such Special Assessment and the time for payment thereof shall be given promptly to the Owners. A Special Assessment, or any portion thereof as determined by the Association, shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within fifteen (15) days after such date.

7. **Reimbursement Assessment on Specific Unit.** In addition to the annual, monthly, or other periodic Assessment, and any Special Assessment authorized herein, the Association may levy at any time Reimbursement Assessments: (a) on every Unit especially benefitted by any improvement made by the written request of the Owner of the Unit to be charged; (b) on every Unit the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Unit 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. 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 shall be allocated among the affected 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 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 Unit(s) benefitted.

**8. Liens for Unpaid Assessments.** All sums assessed to any Unit pursuant to this ARTICLE V, together with interest thereon as provided herein, and all costs, expenses, and attorney's fees incurred, with or without lawsuit or before or after judgment, in collecting delinquent accounts or foreclosing against the Units concerned, shall be secured by a lien on such Unit in favor of the Association and, upon recording of a Notice of Lien by the Association shall be a lien upon the Unit prior to all other liens and encumbrances, recorded or unrecorded, except: (a) first Mortgages; (b) tax and special assessment liens on the Unit in favor of any governmental assessment authority or special improvement district; and (c) any other encumbrances on the interest of the Unit Owner recorded prior to the date of a Notice of Lien provided for herein is recorded, which by law would be a lien prior to subsequently recorded encumbrances.

**9. Consent by Lienors.** All lienors acquiring liens on any Unit after this Declaration shall have been recorded shall be deemed to consent that such liens shall be inferior to future liens for Assessments, as provided herein, whether or not such consent be specifically set forth in the instrument creating such liens.

**10. Notice of Lien.** To evidence a lien for sums assessed pursuant of this ARTICLE V, the Association may prepare a written Notice of Lien setting forth the amount of the Assessment, the due date, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such Notice shall be signed by or on behalf of the Association and may be recorded in the Office of the Utah County Recorder, State of Utah. No Notice of Lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by foreclosure by the Association in the same manner in which Mortgages or Trust Deeds on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the Notice of Lien, and all reasonable attorney's fees. All such costs, expenses, and attorney's fees shall be secured by the lien being foreclosed. The lien shall also secure, and the Owner shall also be required to pay to the Association, any Assessments against the Unit which shall become due during the period of foreclosure. The Association shall have the right and the power to bid an amount equal to its then existing lien



at the foreclosure sale or other legal sale to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the subject Unit as the Owner thereof.

**11. Release of Lien.** A Release of Notice of Lien shall be executed by or on behalf of the Association and recorded in the Office of the Utah County Recorder, State of Utah, upon payment of all sums and secured by a lien which has been made the subject of a recorded Notice of Lien.

**12. Payment by Encumbrancer.** Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this ARTICLE V, and upon such payments such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority. The Association, upon written request and evidence of such encumbrance, shall report to any encumbrancer of a Unit any unpaid Assessment remaining unpaid for longer than thirty (30) days after the same shall have become due.

**13. Information Concerning Unpaid Assessments.** Upon payment of a reasonable fee, and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit; the amount of the current Assessment and the portion thereof, if any, which has theretofore been paid; and credit for advance payments of prepaid items, including but not limited to, an Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

**14. Collection by Association.** It is recognized that the Association under this Declaration will maintain the Common Areas of the Project, except as otherwise contained herein. It is further recognized that the Association is authorized to levy Assessments for the purposes of performing functions it is authorized to perform with the Project. With respect to the Units in the Project, the Association shall be authorized to collect from the Unit Owners and enforce liability for the payment of Assessments levied pursuant to this Declaration.

## **ARTICLE VI** **PROPERTY RIGHTS; CONVEYANCES; EASEMENTS**

**1. Easement Concerning Common Areas.** Each Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas necessary for access to his Unit. Such right and easement shall be appurtenant to, and shall pass with, title to each 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, lessee, contract purchaser, or other person who resides in such Owner's 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 other.

2. **Form of Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit shall describe the interest or estate involved by said Unit's specific legal metes and bounds description and/or substantially as follows:

The following described tract of land situated in Utah County, State of Utah, to wit:

BEGINNING AT A POINT WHICH IS SOUTH 20.65 FEET AND WEST 372.82 FEET FROM THE NORTHEAST CORNER OF SECTION 19, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 00 DEGREES 12'16" EAST 100.00 FEET; THENCE SOUTH 89 DEGREES 47'44" WEST 20.00 FEET; THENCE SOUTH 00 DEGREES 12'16" EAST 176.00 FEET; THENCE NORTH 89 DEGREES 47'44" EAST 25.46 FEET; THENCE SOUTH 00 DEGREES 12'16" EAST 176.00 FEET; THENCE NORTH 89 DEGREES 47'44" EAST 9.33 FEET; THENCE ALONG THE ARC OF A 19.00 FOOT RADIUS CURVE TO THE RIGHT 29.91 FEET (CENTRAL ANGLE = 90 DEGREES 11'43"), THE CHORD OF WHICH BEARS SOUTH 45 DEGREES 06'25" EAST 26.92 FEET; THENCE SOUTH 00 DEGREES 00'33" EAST 128.09 FEET; THENCE SOUTH 89 DEGREES 59'27" WEST 120.00 FEET; THENCE SOUTH 79 DEGREES 04'16" WEST 44.81 FEET; THENCE ALONG THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE LEFT 23.69 FEET (CENTRAL ANGLE + 90 DEGREES 29'27"), THE CHORD OF WHICH BEARS NORTH 45 DEGREES 15'17" WEST 21.30 FEET, THENCE SOUTH 89 DEGREES 30'00" WEST 428.55 FEET; THENCE WEST 168.87 FEET, THENCE NORTH 593.64 FEET; THENCE SOUTH 89 DEGREES 47'44" WEST 387.94 FEET; THENCE NORTH 00 DEGREES 18'52" EAST 432.46 FEET; THENCE NORTH 89 DEGREES 47'44" EAST 1128.69 FEET; THENCE SOUTH 100 DEGREES 12'16" EAST 32.46 FEET TO THE POINT OF BEGINNING.

CONTAINS 11.0243 ACRES MORE OR LESS  
BASIS OF BEARING: STATE PLAN COORDINATE SYSTEM

TOGETHER WITH the undivided ownership interest in the Common Areas which is appurtenant to said Unit as more particularly described in said Declaration and said Plat Map (as said Declaration and Plat Map may have been amended or supplemented).

SUBJECT TO restrictions, covenants, easements, and rights-of-way of record, visible by inspection or otherwise.

Whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Any Lease of a Unit shall be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Bylaws of the Association, and that any failure by the Lessee to comply with the terms of such documents shall be a default under the Lease.

**3. Limitations on Common Areas.** 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 by 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 Units by every Owner.

**B.** The right of the City of Payson, County of Utah, State of Utah, 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.

**C.** The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be consented to in writing by: (a) all holders of Mortgages secured by Units; and (b) all Owners of the Units.

**D.** The obligation of the Owners to not obstruct the Common Areas and to not permit their tenants, guests, or invitees to obstruct the Common Areas.

**4. Easement for Utility Service.** There is hereby created a blanket easement upon, across, and under the Property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to, water (irrigation, domestic, and

culinary), drainage, sewer, natural gas, telephone, cable television, electricity, and other utility services.

**5. Easements for Encroachments.** If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Unit, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any part of the Living Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Living Unit or Living Units, an easement for such encroachment and for maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either in the Common Areas or the Living Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building(s) on the Property, by error in the Plat Map, by settling, raising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof. If any structure on any Limited Common Area 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 Limited Common Area 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. Easements for Construction and Development Activities.** Declarant reserves 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) construction of Living Units; (b) improvement of the Common Areas and construction, installation, and maintenance of roads, walkways, buildings, structures, landscaping, and other improvements designed for the use and enjoyment of some or all of the Owners; and (c) 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. The reservations contained in this Section 6 shall expire ten (10) years after the date on which this Declaration is filed for record in the Office of the County Recorder of Utah County, State of Utah.

**7. Easement to Association.** The Association shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

**8. Right of Ingress, Egress, and Lateral Support.** Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas necessary for access to his Unit, and each Owner shall have the right to the horizontal, vertical, and lateral support of his and any adjoining Unit, and such rights shall be appurtenant to and shall pass with the title to each Unit.

**ARTICLE VII**  
**IMPROVEMENTS**

**Improvements.** The improvements included in the Project are now or will be located on the Project, and all of such improvements are described on the Plat Map. The Plat Map indicates the number of Units which are to be contained in the building(s) which comprises a part of such improvements, and other significant facts relating to such building(s), Units, Common Areas, and Limited Common Areas.

**Description of Buildings and Units.** The Project is anticipated to consist of Plat A, and Plat B. Plat A consists of sixteen (16) buildings each containing two (2) Units and nineteen (19) buildings each containing one (1) unit, for a total of fifty-one (51) Units. It is anticipated that Plat B is to consist of twenty-two (22) buildings containing two (2) Units and three buildings each containing one (1) unit, for a total of forty-seven (47) Units.

A. Each Unit is anticipated to have individual culinary water, natural gas, and electric meters.

B. Water for the Common Area of the Project is anticipated to be separately metered and paid through the Association.

C. Each Unit is anticipated to have an attached two (2) car garage.

D. Each Unit is anticipated to have individual telephone hook-ups.

E. The construction of the buildings are anticipated to be a combination of stucco and synthetic stone. The roof is anticipated to be asphalt shingle.

F. The Project will have a portion of the Common Areas landscaped with grass, trees, shrubs, and flowers.

G. A private roadway will allow ingress/egress to 970 West Street and 850 West Street in Payson, Utah.

H. The Project shall have such other improvements as indicated on the Plat Map and the plans and specifications associated with the development of the Project.

**ARTICLE VIII**  
**RESTRICTIONS**

1. **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to the Living Units and shall not be obstructed by the Owners, their tenants, guests, or invitees.
  
2. **Use of Living Units.** At least one occupant of each living unit or unit must be at least 55 years of age or older. Each of the Living Units in the Project is intended to be used for single-family residential housing for either singles or a married couple as permitted by the applicable provisions of the City of Payson's zoning ordinances. Each Living Unit and each Owner is subject to the uses and restrictions imposed by such zoning, including any parking restrictions. Each Living Unit is intended to be used by one family including the extended members of that family. Each Living Unit may be rented or leased by the Owner for use and occupancy as herein stated. However, the term "residential" as used herein shall be held and construed to exclude individual room letting or boarding, and commercial and professional uses which are not the subject of a permit granted by the City of Payson pursuant to its then current home occupation ordinance. No Living Unit shall be used or occupied by any persons not coming within the definition of "Family" as such terms are defined and intended in the City of Payson zoning ordinances as of the date hereof. No 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 the cancellation or an increase in the cost of insurance covering the Common Areas.
  
3. **Leasing.** A Unit Owner may Lease his Living Unit. All Leases shall be in writing executed by the Owner and the Lessee/Tenant, and shall contain a specific statement that the Lease is subject to the provisions of this Declaration. No Owner shall Lease less than his entire Living Unit. No Owner shall Lease his Living Unit for less than an initial term of one year. All leases shall be subject to the provisions of this Declaration whether or not stated therein.
  
4. **Enforcement of Land Use Restrictions.** The following persons have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration: (a) the Declarant, so long as it has any interest in any of the Property; (b) any Owner; or (c) 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.
  
5. **Restrictions Concerning Common Areas.** There shall be no obstructions of the Common Areas by the Owners, their tenants, guests, or invitees without the prior written consent of the Association. The Association may by rules and regulations prohibit or limit

the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon consent of the Association.

**6. Miscellaneous Restrictions.** Nothing shall be done or kept in or on any Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance of the Project or any part thereof, or increase the rate of the insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by his invitees. No noxious, destructive, or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

**7. Animals.** No animals or birds of any kind shall be raised, bred, or kept in any Dwelling or on any portion of the Property; except that no more than two (2) usual and ordinary household pets such as dogs, cats, birds, may be kept, provided that they are not kept, bred or maintained for any commercial purposes and they are kept under reasonable control at all times. Any such dog shall be kept on a leash at all times when the dog is in the Common Area. Owners shall prevent their pet from soiling any portion of the Common Area and in the event that a pet does soil a portion of the Common Area, the Owner in person in control of such pet shall immediately clean up after the pet. The Board may enact reasonable rules respecting the keeping of animals within the Project, including noise restrictions, and may designate certain areas in which animals may not be taken or kept, or they may require that specific animals not be allowed on any part of the Property. No pet allowed hereunder shall be larger than ten (10) pounds in weight. It is intended that all permitted pets shall be small household pets, to be kept indoors and not left outdoors overnight and such shall, at no time, become a nuisance to the other Owners within the Project.

**8. Declarant's Right to Sell Units.** Notwithstanding anything contained herein to the contrary, until the Declarant has completed and sold all of the Units, the Unit Owners who have purchased Units from the Declarant shall not interfere with the completion of the contemplated improvements and sale of the remaining Units. The Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale,

including but not limited to, the maintenance of a sales office, the showing of the Units, and the display of signs.

9. **Parking & Garage Use.** Boats, trailers, large trucks, recreational vehicles, and commercial vehicles belonging to Owners or other residents of the Project shall not be parked in the Common Areas, including the Limited Common Areas for more than 72 consecutive hours, but arrangements must be made to park or store those vehicles offsite or in specifically designated RV Parking Areas within the Project.

10. **No Violation of Rules and Regulations.** No Owner shall violate the rules and regulations for the use of the Living Units and the Common Areas as may be adopted from time to time by the Association.

11. **Signs.** No signs or other advertising shall be displayed which are visible from the exterior of any Living Unit or on the Common Areas, including "For Sale" signs, except in conformity with the rules and regulations which may be promulgated by the Association.

12. **Other Restrictions.** The following uses and practices are specifically prohibited, in addition to any additional restrictions that may, from time to time, be adopted by the Association:

A. No outside television or radio aerial or antenna, or other similar device for reception or transmission, shall be permitted on any Common Area or on the exterior of any Living Unit.

B. No Living Unit shall contain any window-mount evaporative coolers or air conditioners.

C. Business vehicles in excess of 3/4 ton of Owners, their tenants, guests, or invitees shall not be parked in front of Living Units overnight, nor shall any vehicle be repaired, disassembled, or reassembled on any Common Area or Limited Common Area.

D. Except for trash collection days, trash receptacles are not to be left outside the garages. Empty trash receptacles must be returned to the garages the day of collection.

E. Living Unit interior windows shall be covered within thirty (30) days of occupancy with permanent window coverings, white or off white in color (as seen from the exterior).

F. Living Unit patios shall not be used as general storage areas, for the hanging and drying of laundry, nor for decorative items visible from adjoining Living Units or streets.



**ARTICLE IX**  
**ARCHITECTURAL CONTROL**

1. **Architectural Control Committee.** The Board of Trustees of the Association shall consist of and act as the Architectural Control Committee, the function of which shall be to insure that all improvements and landscaping within the Property to conform with the plans and specifications and harmonize with existing surroundings and structures.
2. **Submission to Committee.** No structure or improvements of any kind which is visible from the Common Areas shall be constructed, maintained, altered, or refurbished, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.
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 within the Property conform to and harmonize with existing surroundings and structures.
4. **Approval Procedure.** Any plans and specifications submitted to the Architectural Control Committee shall be approved or disapproved by it in writing within thirty (30) 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.
5. **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 IX.
6. **Exception for Declarant.** The foregoing provisions of this ARTICLE IX shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Unit or on any part of the Common Areas and which occurs at any time during the ten (10) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, State of Utah.
7. **Diligent Prosecution to Completion.** Once begun, any improvements, construction, landscaping, or alterations approved by the Association shall be diligently prosecuted to completion.

**ARTICLE X**  
**PARTY WALLS**

1. **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Living Units upon the Property and placed on the dividing line between the Units shall constitute a party wall, and to the extent not inconsistent with the provisions of this ARTICLE X, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
2. **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
3. **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
4. **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this ARTICLE X shall be appurtenant to the land and shall pass to such Owner's successors in title.

**ARTICLE XI**  
**INSURANCE**

1. **Insurance.** The Association shall secure or cause to be secured such policies of liability insurance for bodily injury and property damage, fire and hazard insurance, fidelity bond coverage, or other types of insurance to insure the Common Areas and the Association or the Owners and others against such risks as the Association may deem advisable. Such insurance policies shall provide such coverages and protections, provide such insurable amounts, and contain such endorsements as deemed advisable by the Association.
  
2. **Review of Insurance.** The Association shall periodically, and whenever requested by twenty five percent (25%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and actions taken on such review to the Owner of each Unit and to the holder of any Mortgage on any Unit who shall have requested a copy of such report. Copies of every policy of insurance procured by the Association shall be available for inspection by any Owner.
  
3. **Living Units Not Insured by Association.** Unless determined otherwise by the Association, the Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage, or other insurance covering any Unit and acts and events thereon and personal property located therein. Accordingly, Owners of Units in the Project are advised to obtain fire, extended coverage, and liability insurance to the full replacement value of their Living Unit and personal property.

**ARTICLE XII**  
**RIGHTS OF MORTGAGEES**

As provided herein, the Association may from time to time amend this Declaration to adopt such provisions regarding the rights of Mortgagees as the Association deems necessary and appropriate.

**ARTICLE XIII**  
**ASSOCIATION BYLAWS**

The Bylaws of the Association are attached hereto as Exhibit "C" and incorporated herein by this reference.

**ARTICLE XIV**  
**MISCELLANEOUS**

1. **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 last known 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 President of the Association.

2. **Amendment.** Except as provided in and/or subject to the terms below, the vote of at least two-third's (2/3's) of the Members of the Association shall be required to amend this Declaration or the Plat Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument, the Association shall certify that the vote required by this Section 2 for amendment has occurred. The foregoing right of amendment shall, however, be subject to the following:

A. Until such time as seventy-five percent (75%) of the Units in the Project have been sold, Declarant shall have the sole and exclusive right to amend this Declaration and/or the Plat Map. Such rights shall obtain without regard to the subject-matter of amendment.

B. Notwithstanding anything to the contrary herein contained, no amendment to the Plat Map or any provision of this Declaration may have the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant) herein shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

3. **Consent in Lieu of Vote.** In any case in which this Declaration requires authorization or approval of a transaction with the assent or affirmative vote of a stated percentage or number of the Owners, whether present or represented by proxy 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 or number of all membership votes outstanding in connection with the class of membership concerned.

4. **Enforcement.** Each Unit Owner shall comply strictly with the provisions of this Declaration, the rules and regulations promulgated pursuant thereto, as the same may be lawfully amended from time to time, and with the decisions adopted pursuant to this Declaration and the rules and regulations. Defaulting Owners shall pay all costs and expenses incurred in enforcing the provisions hereof, including reasonable attorney's fees and

costs and monies paid and due for damages or injunctive relief, or both, maintainable by the Association or in a proper case by an aggrieved Unit Owner.

5. **Waiver.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of time lapse or the number of violations or breaches which may occur.

6. **Reserve Fund.** The Association may establish an adequate reserve to cover the costs of reasonably predictable and necessary major repairs and replacements of the Common Areas and may cause such reserve to be funded by annual, monthly, or other periodic Assessments as deemed appropriate.

7. **Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

8. **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, 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, and the parties consent to jurisdiction and venue in the Courts of Utah County, State of Utah.

9. **Covenants to Run with 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 shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all 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 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.

10. **Limited Liability.** Neither the Declarant, the Association, the Board of Trustees of the Association, the officers of the Association, nor any member, agent, or employee of the same shall be liable to a party for any action or omission for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

11. **Effective Date.** This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the Office of the County Recorder of Utah County, State of Utah.

EXECUTED by Declarant on the day and year first above written.

"DECLARANT"


Pacific Development, LLC  
A Utah limited liability company

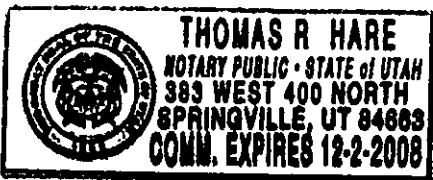
By:   
Otto Belvedere, Manager/Managing Member

STATE OF UTAH                    )  
  :SS.  
COUNTY OF UTAH                )



On the 7<sup>th</sup> day of ~~October~~ <sup>May</sup>, ~~2007~~ <sup>2008</sup>, personally appeared before me, a Notary Public in and for the State of Utah, OTTO BELVEDERE, who represented to me that he is a Manager/Managing Member of Pacific Development, LLC, a Utah limited liability company, the signer of the above instrument, who duly acknowledged to me that he executed the same on behalf of the said limited liability company.

  
NOTARY PUBLIC



**EXHIBIT "A"**

The following described tract of land situated in Utah County, State of Utah, to wit:

BEGINNING AT A POINT WHICH IS SOUTH 20.65 FEET AND WEST 372.82 FEET FROM THE NORTHEAST CORNER OF SECTION 19, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 00 DEGREES 12'16" EAST 100.00 FEET; THENCE SOUTH 89 DEGREES 47'44" WEST 20.00 FEET; THENCE SOUTH 00 DEGREES 12'16" EAST 176.00 FEET; THENCE NORTH 89 DEGREES 47'44" EAST 25.46 FEET; THENCE SOUTH 00 DEGREES 12'16" EAST 176.00 FEET; THENCE NORTH 89 DEGREES 47'44" EAST 9.33 FEET; THENCE ALONG THE ARC OF A 19.00 FOOT RADIUS CURVE TO THE RIGHT 29.91 FEET (CENTRAL ANGLE = 90 DEGREES 11'43"), THE CHORD OF WHICH BEARS SOUTH 45 DEGREES 06'25" EAST 26.92 FEET; THENCE SOUTH 00 DEGREES 00'33" EAST 128.09 FEET; THENCE SOUTH 89 DEGREES 59'27" WEST 120.00 FEET; THENCE SOUTH 79 DEGREES 04'16" WEST 44.81 FEET; THENCE ALONG THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE LEFT 23.69 FEET (CENTRAL ANGLE + 90 DEGREES 29'27"), THE CHORD OF WHICH BEARS NORTH 45 DEGREES 15'17" WEST 21.30 FEET, THENCE SOUTH 89 DEGREES 30'00" WEST 428.55 FEET; THENCE WEST 168.87 FEET, THENCE NORTH 593.64 FEET; THENCE SOUTH 89 DEGREES 47'44" WEST 387.94 FEET; THENCE NORTH 00 DEGREES 18'52" EAST 432.46 FEET; THENCE NORTH 89 DEGREES 47'44" EAST 1128.69 FEET; THENCE SOUTH 100 DEGREES 12'16" EAST 32.46 FEET TO THE POINT OF BEGINNING.

CONTAINS 11.0243 ACRES MORE OR LESS

BASIS OF BEARING: STATE PLAN COORDINATE SYSTEM

SUBJECT TO restrictions, covenants, easements, encumbrances, and rights-of-way of record, visible by inspection or otherwise.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described Property and any improvements (other than buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant: (a) to construct and complete each buildings and all of the other improvements described in this Declaration or in the Plat Map recorded herewith, and to do all things reasonably necessary or proper in connection therewith; (b) to construct and complete on the additional land annexed hereto, or any portion thereof, such improvements as Declarant shall determine to build in its sole discretion (and whether or not the additional land annexed hereto, or any portion thereof, has been or hereafter will be added to the Project); (c) to improve portions of the said Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of



all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described Property 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 reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire twenty (20) years after the date on which this Declaration is filed for record in the Utah County Recorder's Office, State of Utah.

ALL 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 thereto; all instruments of record which affect the above-described Property or any portion thereof, including, without limitation, any Mortgage (and nothing herein shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Record of Plat Map or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described Property at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities; and to each of the covenants, easements, conditions, and restrictions contained in this Declaration.

**EXHIBIT "B"**

**THE DESCRIPTION OF THE ADDITIONAL LAND TO BE ANNEXED TO THE PROJECT IS SET FORTH AND ATTACHED IN THIS EXHIBIT "B" TO THE DECLARATION SOLELY FOR PURPOSES OF IDENTIFICATION. THE DECLARATION IS NOT INTENDED AS AND SHOULD NOT BE DEEMED TO CONSTITUTE ANY LIEN, ENCUMBRANCE, RESTRICTION, OR LIMITATION UPON ANY PORTION OF SUCH ADDITIONAL LAND UNLESS AND UNTIL SUCH PORTION IS ADDED TO THE PROJECT IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.**

**PLAT B**

The following described tract of land situated in Utah County, state of Utah, to wit:

Beginning at a point which is south 619.67 feet and west 337.32 feet from the northeast corner of section 19, township 9 south, range 2 east, salt lake base and meridian; thence south 00 degrees 00'33" east 225.17 feet; thence along the arc of 172.00 foot radius curve to the right 185.64 feet (central angle 61 degrees 50'20"), the chord of which bears south 30 degrees 54'37" west 176.76 feet; thence along the arc of a 228.00 foot radius curve to the left 204.95 feet (central angle = 51 degrees 30'09"), the cord of which bears south 36 degrees 04'42" west 198.12 feet; thence south 89 degrees 30'00" west 124.06 feet; thence north 00 degrees 30'00" west 193.16 feet; thence south 89 degrees 30'00" west 443.38 feet; thence north 351.49 feet; thence east 168.87 feet; thence north 89 degrees 30'00" east 428.55 feet; thence along the arc of a 15.00 foot radius curve to the right 23.69 feet (central angle = 90 degrees 29'27"), the chord of which bears South 45 degrees 15'17" east 21.30 feet; thence north 79 degrees 04'16" east 44.81 feet; thence north 89 degrees 59'27" east 120.00 feet to the point of beginning.

Area = 6.9793 ACRES MORE OR LESS

SUBJECT TO restrictions, covenants, easements, encumbrances, and rights-of-way of record, visible by inspection or otherwise.

**PLATS A and B**

Beginning at a point which is south 20.65 feet and west 372.82 feet from the northeast corner of section 19, township 9 south, range 2 east, salt lake base and meridian; thence south 00 degrees 12'16" east 100.00 feet; thence south 89 degrees 47'44" west 20.00 feet; thence south 00 degrees 12'16" east 176.00 feet; thence north 89 degrees 47'44" east 15.38 feet; thence south 06 degrees 16'39" east 86.77 feet; thence south 29 degrees 02'34" east 61.71 feet; thence along the arc of a 66.00 foot radius curve to the left 65.06 feet (central angle = 56 degrees 28'39"), the chord of which bears 04 degrees 15'52" west 62.46 feet; thence along the arc of a 50.00 foot radius curve to the right 20.91 feet

(central angle = 23 degrees 57'54"), the chord of which bears south 11 degrees 59'30" east 20.76 feet; thence south 00 degrees 00'33" east 325.40 feet; thence along the arc of a 172.00 foot radius curve to right 185.46 feet (central angle = 61 degrees 50'20"), the chord of which bears south 35 degrees 20'32" west 210.25 feet; thence along the arc of a 228.00 foot radius curve to the left 204.95 feet (central angle = 51 degrees 30'09"), the chord of which bears south 36 degrees 04'42" west 198.12 feet; thence south 89 degrees 30'00" west 124.06 feet; thence north 00 degrees 30'00" west 193.16 feet; thence south 89 degrees 30'00" west 443.38 feet; thence north 945.13 feet; thence north 89 degrees 47'44" east 741.05 feet to the point of beginning.

CONTAINS 17.1827 ACRES MORE OR LESS

**EXHIBIT "C"**

**BYLAWS**

**OF**

**HERITAGE VILLAGE HOMEOWNERS ASSOCIATION, LLC.  
(A Utah Limited Liability Company)**

**ARTICLE I**  
**NAME AND LOCATION**

The name of the Corporation is **HERITAGE VILLAGE HOMEOWNERS ASSOCIATION, LLC**, a Utah Limited Liability Company, hereinafter referred to as the "Association". The principal office of the Association shall be located at **77 East Center, Provo, Utah 84601**.

**ARTICLE II**  
**DEFINITIONS**

The terms defined in ARTICLE I of the Declaration of Covenants, Conditions, and Restrictions for Heritage Village, a Planned Unit Residential Development, shall apply to these Bylaws.

**ARTICLE III**  
**MEETINGS OF MEMBERS**

**Section 1. Annual Meetings.** The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 7:00 o'clock p.m. If the day of the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following, which is not a legal holiday.

**Section 2. Special Meetings.** Special meetings of the Members may be called at any time by the Board of Trustees or twenty-five (25%) of the votes of all of the Members.

**Section 3. Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary of the Association, by mailing a copy of such notice, postage prepaid, at least ten (10) days but not more than thirty (30) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day, and hour of the meeting, and in the case of a Special Meeting, the purpose of the meeting.

**Section 4. Place of Meetings.** The Board of Trustees may designate any place within the State of Utah as the place of meeting for any annual meeting or for any special meeting. If no designation is made, the place of meeting shall be the principal office of the Association.

**Section 5. Quorum.** The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, seventy-five percent (75%) of the votes of all of the Members shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

**Section 6. Voting.** The Association shall have a total voting percentage of one hundred percent (100%). Any and all actions taken by the Association shall be previously approved by at least a majority of the Unit Owners. Multiple record Owners of a single Unit shall be unanimous in their single vote for such Unit; otherwise such Unit shall not be represented by their votes.

**Section 7. Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit.

## **ARTICLE IV** **BOARD OF TRUSTEES**

**Section 1. General Powers.** The business and affairs of the Association shall be managed by its Board of Trustees as provided in these Bylaws and the Declaration. The Board of Trustees may adopt such rules and regulations for the conduct of their meetings and the management of the Association as they deem proper. The Board of Trustees shall have power to:

i) Adopt and publish rules and regulations governing the use of the Common Areas, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

ii) Exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

iii) Declare the office of a member of the Board of Trustees to be vacant in the event such member shall be absent from three (3) consecutive Regular Meetings of the Board of Trustees;

iv) Employ a Manager, an independent contractor, or such other employees as they deem necessary or prudent, and to prescribe their duties; and

v) Employ accountants, general contractors, attorneys, title officers, or such other professionals as may be deemed necessary or prudent and to prescribe their duties.

**Section 2. Duties.** It shall be the duty of the Board of Trustees to:

i) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by at least twenty-five percent (25%) of the Members;

ii) Supervise all agents and employees of this Association, and to see that their duties are properly performed;

iii) As more fully provided in the Declaration, to:

(1) Fix the amount of the Assessments;

(2) Send to each Unit Owner written notice of each Assessment; and

(3) Execute, record, enforce, and foreclose the Lien against any Unit for which Assessments are not paid.

iv) Issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board of Trustees for the issuance of these certificates. A certificate shall be conclusive evidence of such payment;

v) Procure and maintain adequate liability and hazard insurance on property owned by the Association, as it may deem appropriate, as more fully described in the Declaration;

vi) Cause all agents or employees having fiscal responsibilities to be bonded, as it may deem appropriate, and as provided in the Declaration; and

vii) Cause the Common Areas to be maintained.

**Section 3. Elections.** Election to the Board of Trustees shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**Section 4. Number.** The affairs of this Association shall be managed by a Board of three (3) Trustees. The number of Trustees may be changed from time to time by an amendment to these Bylaws and the Declaration, but never less than three (3) nor greater than seven (7).

**Section 5. Term of Office.** The Trustees of the Association shall hold office for a period of one (1) year, unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

**Section 6. Regular Meetings.** Regular meetings of the Board of Trustees shall be held monthly, without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

**Section 7. Special Meetings.** Special meetings of the Board of Trustees may be called by the President of the Association or by any two (2) Trustees. The Secretary of the Association shall give notice of the time, place, and purpose or purposes of each special meeting to each Trustee by written notice at least three (3) days before the meeting.

**Section 8. Quorum.** A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business, but less than the quorum may adjourn any meeting from time to time until the quorum shall be present, whereupon the meeting may be adjourned without further notice. Every act or decision done or made by the majority of the Trustees present at a duly held meeting shall be regarded as the act of the Board. At any meeting at which every Trustee shall be present, even though without any notice, any business may be transacted.

**Section 9. Manner of Acting.** At all meetings of the Board of Trustees, each Trustee shall have one (1) vote. The act of a majority present at a meeting shall be the act of the Board of Trustees, provided a quorum is present.

**Section 10. Vacancies.** A vacancy in the Board of Trustees shall be deemed to exist in case of death, resignation, or removal of any Trustee, or if the authorized number of Trustees be increased, or if the Members fail at any meeting of Members at which any Trustee is to be elected, to elect the full authorized number to be elected at that meeting.

**Section 11. Removal.** Any Trustee may be removed from the Board with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation, or removal of a Trustee, his successor shall be selected by the remaining Members of the Board and shall serve for the unexpired term of his predecessor.

**Section 12. Resignation.** A Trustee may resign at any time by delivering written notification thereof to the President of the Association. Resignation shall become effective upon its acceptance by the Board of Trustees; provided, however, that if the Board of Trustees has not acted thereon within ten (10) days from the date of its delivery, the resignation shall upon the tenth (10th) day be deemed accepted.

**Section 13. Presumption of Assent.** A Trustee of the Association who is present at a meeting of the Board of Trustees at which action on any Association matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action to the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Trustee who voted in favor such action.

**Section 14. Compensation.** By resolution of the Board of Trustees, the Trustees may be paid their expenses, if any, of attendance at each meeting of the Board of Trustees, and may be paid a fixed sum for attendance at each meeting of the Board of Trustees or a stated salary as Trustee. No such payment shall preclude any Trustee from serving the Association in any other capacity and receiving compensation therefore.

**Section 15. Emergency Power.** When, due to a natural disaster or death, a majority of the Trustees are incapacitated or otherwise unable to attend the meetings and function as Trustees, the remaining members of the Board of Trustees shall have all the power necessary to function as a complete Board, and for the purpose of doing business and filling vacancies shall constitute a quorum, until such time as all Trustees can attend or vacancies can be filled pursuant to these Bylaws.



**Section 16. Informal Resolution of Board of Trustees.** Unless otherwise provided by law, any action required to be taken at a duly authorized meeting of the Board of Trustees may be taken without a formal meeting, provided the resolution is placed in writing in the Minute Book of the Association, setting forth the action taken by the Trustees, and the same is signed by all the members of the Board of Trustees entitled to vote with respect to the subject-matter thereof. Any resolution shall be as effective as any resolution passed by a majority of the members of the Board of Trustees at any lawful meeting duly authorized and called.

**ARTICLE V**  
**OFFICERS**

**Section 1. Enumeration of Officers.** The officers of the Association shall be a President, a Vice-President, and a Secretary/Treasurer.

**Section 2. Election of Officers.** The election of officers shall be by and from the Board of Trustees.

**Section 3. Multiple Offices.** The offices of Secretary and Treasurer may be held by the same person.

**Section 4. Duties.** The duties of the officers are as follows:

i) **President.** The President shall be the chief executive officer of the Association, and shall preside at all meetings of the Association and of the Board of Trustees.

The President shall see that orders of the Board of Trustees are carried out; shall sign all contracts and other written instruments; shall co-sign all checks and promissory notes of the Association; and shall have all of the general powers and duties that are usually vested in the office of President of a similar type association.

ii) **Vice-President.** The Vice-President shall act in the place and stead of the President in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Trustees.

iii) **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Association and the Board of Trustees; serve notice of meetings of the Board of Trustees and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board of Trustees.

iv) **Treasurer.** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association, and shall disburse such funds as directed by the

Board of Trustees; shall co-sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its Annual Meeting and deliver a copy of each to the Members; and shall perform such other duties as required by the Board of Trustees.

## **ARTICLE VI** **BOOKS AND RECORDS**

The books, records, and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation, and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

## **ARTICLE VII** **CONTRACTS, LOANS, CHECKS, AND DEPOSITS**

**Section 1. Contracts.** The Board of Trustees may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

**Section 2. Loans.** No loan or advances shall be contracted on behalf of the Association, no negotiable paper or other evidence of its obligation under any loan or advance shall be issued in its name, and no property of the Association shall be mortgaged, pledged, hypothecated, or transferred as security for the payment of any loan, advance, indebtedness or liability of the Association, unless and except as authorized by the Board of Trustees. Any such authorization may be general or confined to specific instances.

**Section 3. Deposits.** All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board of Trustees may select, or as may be selected by any officer or agent authorized to do so by the Board of Trustees.

**Section 4. Checks and Drafts.** All notes, drafts, acceptances, checks, endorsements, and evidences of indebtedness of the Association shall be signed by such officer or officers or such agent or agents of the Association and in such manner as the Board of Trustees from time to time may determine. Endorsements for deposit to the credit of the

Association in any of its duly authorized depositories shall be made in such manner as the Board of Trustees from time to time may determine.

### **ARTICLE VIII** **ASSESSMENTS**

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual, monthly, or other periodic Assessments, Special Assessments, or Reimbursement Assessments which are secured by a continuing lien upon the property against which the Assessment is made. Any Assessments which are not paid when due shall be delinquent. If the Assessment is not paid within fifteen (15) days after the due date, the Assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the Lien against the Unit, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas or abandonment of his Unit.

### **ARTICLE IX** **AMENDMENTS AND CONFLICTS**

**Section 1.** These Bylaws may be amended, at an annual or special meeting of the Members, by two-third's (2/3's) or more of the votes of the Members.

**Section 2.** In the event of a conflict in any of the provisions of any such documents, the documents of the Association shall govern or control in the following order or preference: (a) the Declaration; (b) the Articles of Incorporation; (c) the Bylaws; and (d) the rules and regulations.

### **ARTICLE X** **INDEMNIFICATION**

**Section 1. Indemnification.** No officer or Trustee shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said officer or Trustee performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person, and his heirs and administrators, who shall serve at any time hereafter as a Trustee or officer of the Association from and against any and all claims, judgments, and liabilities to which such persons shall become subject by reason of his having heretofore or hereafter been a Trustee

or officer of the Association, or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Trustee or officer, and shall reimburse each such person for all legal and other expenses reasonably incurred by him in connection with any such claim or liability, including power to defend such person from all suits or claims; provided, however, that no such person shall be indemnified against, or be reimbursed for, any expense incurred in connection with any claim or liability arising out of his own negligence or willful misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which he may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically herein provided for. The Association, its Trustees, officers, employees, and agents shall be fully protected in taking any action or making any payment, or in refusing so to do in reliance upon the advice of counsel.

**Section 2. Other Indemnification.** The indemnification herein provided shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of Members, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Trustee, officer, or employee, and shall inure to the benefit of the heirs, executors, and administrators of such person.

**Section 3. Insurance.** The Association may, but is not required to, purchase and maintain insurance on behalf of any person who is or was a Trustee, officer, or employee of the Association, or is or was serving at the request of the Association as a Trustee, officer, employee, or agent of another corporation, partnership, limited liability company, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against liability under the provisions of this Section.

**Section 4. Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association by its Board of Trustees, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

**ARTICLE XI**  
**GENERAL PROVISIONS**

**Section 1. Waiver of Notice.** Whenever any notice is required to be given to any Member or Trustee of the Association under the provisions of these Bylaws, the Articles of Incorporation, or the Declaration, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute a waiver of notice of such meetings, except where attendance is for the express purpose of objecting to the legality of that meeting.


**Section 2. Fiscal Year.** The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**Section 3. No Liability of Members.** Except as provided in these Bylaws and in the Declaration, the Members are not individually or personally liable for the debts or obligations of the Association.

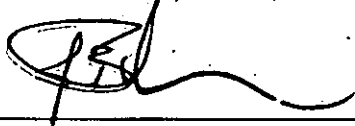
IN WITNESS WHEREOF, we, being all of the Trustees of **HERITAGE VILLAGE HOMEOWNERS ASSOCIATION, LLC.**, a Utah Limited Liability Company, have hereunto set our hands this \_\_\_\_\_ day of October, 2007.

  
\_\_\_\_\_

**Otto Belvedere, Trustee**

  
\_\_\_\_\_

**Lenny Belvedere, Trustee**

  
\_\_\_\_\_

**John Belvedere, Trustee**

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR  
HERITAGE VILLAGE  
(A Planned Unit Residential Development)**

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