

**FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF STRAWBERRY LAKEVIEW
DEVELOPMENT**

**THIS FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS ("DECLARATION")** is made and executed this 24th day of November, 2008 by the Board of Directors of Strawberry Lakeview Owners' Association, Inc., which was formed for administering the affairs of the Strawberry Lakeview, LLC development which is reflected by the recorded plat of Strawberry Lakeview, LLC recorded August 13, ~~1979~~¹⁹⁹⁷ as Entry Number 196328 in Book 356 at Pages 139-198 in the Official Records of the Wasatch County Recorder. This First Amended and Restated Declaration of Covenants, Conditions and Restrictions was as approved by a majority of the Members/Lot Owners at a meeting thereof held November 15, 2008 at 10:00 a.m., and has been approved by the Board of Directors of Strawberry Lakeview Owners' Association, Inc.

RECITALS:

A. Declarant is the record Owner of that certain tract of real property located in Wasatch County, Utah near Strawberry Reservoir more particularly described as follows (the "Property"), to-wit:

See Exhibit "A" Attached Hereto and
Incorporated Herein by Reference 343163 12-29-08

B. Declarant desires to create on the Property a recreational development. It is anticipated that the development, in part will adjoin United States Forest Service Property thereby providing open space. The development is to consist of 95 recreational lots including roads (the "Development").

C. Declarant desires to provide for preservation of the values, for the maintenance of the improvements and Common Areas and preservation of any protection zones within or in proximity to this Development. To this end and for the benefit of the Property and the Owners thereof, Declarant desires to subject the Property and each Lot therein to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

D. For the efficient preservation of the values and improvements in this Development, Strawberry Lakeview Homeowners Association, a Utah non-profit corporation, has been formed which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and enforce the provisions of this Declaration.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby declares that all of the Property described above together with each Lot therein shall be held, occupied, sold, transferred and conveyed subject to the following covenants, conditions, restrictions, easements, and

Management Policies which shall (a) run with the Property and each respective Lot in the Development; (b) be binding on all parties having any interest in any Lot within the Development and their respective heirs, successors and assigns; and (c) shall inure to the benefit of Declarant and each Owner of a Lot in the Development.

ARTICLE I

DEFINITIONS

1.1 **"Association"** shall mean and refer to Strawberry Lakeview Homeowners Association, a Utah non-profit corporation, its successors and assigns.

1.2 **"Common Area"** shall mean and refer to that part of the Property, if any, which is not included within the lots as described on the Plat, including all roadways and other improvements other than utility lines now or hereafter constructed or located thereon.

1.3 **"Declarant"** shall mean and refer to Strawberry Lakeview, L.L.C. a Utah Limited Liability Company.

1.4 **"Development"** shall mean and refer to the Property as described by the Plat as defined herein.

1.5 **"Grouse Strutting Protection Zones"** shall mean and refer to those properties which have or will be transferred to the United States Forest Service for preservation of Grouse strutting grounds pursuant to the agreement between the Declarant's predecessors in interest, Strawberry Lake Estates Homeowners Association, Inc., Wasatch County, and the United States adjoining or in the vicinity of the Development.

1.6 **"Lot"** shall mean and refer to any plot of land shown as such upon any recorded final plat map of the Properties with the exception of the Common Area.

1.7 **"Member"** shall mean and refer to every person who holds membership in the Association. Membership in the Association shall be limited to Owners and Declarant.

1.8 **"Owner"** shall mean and refer to the person or legal entity who is the owner of record (in the office of the County Recorder of Wasatch County, Utah) of a fee or an undivided fee interest in any lot in the Development. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.9 **"Plat"** shall mean and refer to the subdivision plat of the Development executed and acknowledged by Declarant on the 6th day of August, 1997, prepared and certified by Robert D.

Gunnell (a duly registered Utah Land Surveyor holding Certificate No. 142870) and filed for record in the office of the County Recorder of Wasatch County, Utah.

1.10 **"Property"** shall mean and refer to that certain real property described in Recital "A," and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY RIGHT IN COMMON AREAS

2.1 **Owners' Easements of Enjoyments.** Each Owner shall have a right and easement of use and enjoyment in and to the Common Areas including any that may hereafter be brought within the Development, subject to the limitations on use described in this Declaration, and in particular in Section 2.4 and Articles V and VI hereof. Such right and easement shall be appurtenant to and shall pass with title to each lot in the Development and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family Members, household guest, tenant, lessee, contract purchaser, or other person who resides on such Member's lot.

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

LOT NO. _____ contained within Strawberry Lakeview Development, as this lot is identified in the Plat recorded in Book _____ at page _____ and in the Declaration of Covenants, Conditions and Restrictions of Strawberry Lakeview Development@, recorded in Book _____ at Page _____; TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described and as provided for, in said Declaration of Covenants, Conditions and Restrictions; SUBJECT TO easements, reservations and restrictions of record (including those contained in the recorded Declaration of Covenants, Conditions and Restrictions applicable to this property; and FURTHER SUBJECT TO reservation of all oil, gas and all other mineral rights including the right to extract the same, and subject to a reservation of all water rights and water stock of any kind or nature.

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

2.3 **Transfer of Title.** Declarant agrees that it shall convey to the Association title to the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities and subject to all easements, restrictions and encumbrances of record or observable on the land or enforceable at law or in equity), on or before the expiration of one hundred twenty (120) days following the closing of the first sale of a Lot within the Development.

2.4 **Limitations on Easement.** Each Member's right and easement of use and enjoyment of his respective Lot and the Common Areas shall be subject to the following:

(a) the right of the Association to suspend the voting rights in the Association and the right of the Association to suspend or restrict the right to use of the Common Area by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 90 days for any infraction of its rules and regulations as set forth in this Declaration and as may be published by the Board of Directors of the Association;

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, special service district, authority or other entity for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by vote of the majority of the Members of the Association in accordance with the notice and other provisions provided in the Bylaws of the Association.

(c) the right of the Declarant and/or the Association to control inoperable vehicles of any kind or nature located upon any Lot, Common Area, open space, or protection zone; said areas restricted to the extent that no vehicles not in operable condition of any kind or nature shall be left upon any Lot, common area, open-space or protection zone for a period of time in excess of fifteen (15) days. In the event an infraction occurs of this subsection (c) the Declarants and/or the Association shall have the right to remove said inoperable vehicle and charge the owner thereof any and all expenses incurred in doing so;

(d) the right of the Declarant and/or the Association to reserve open-space, common area, reservoir/water tank protection zones, sewage lagoon protection zones, grouse strutting protection zones and well protection zones ("Protection Zones") adjoining or in the vicinity of the Development. Certain open-space adjoining or in the vicinity of the Development has heretofore, is, and will hereafter be reserved to the Declarant, its affiliates, its predecessors in interest and /or the United States Forest Service to preserve, maintain, promote, develop and manage said area as and for sage grouse habitat. Said reservations and conditions herein reserved and granted are also subject to agreements between the Declarant and Wasatch County, the Bureau of Reclamation, the Bureau of Land Management, the United States Forest Service, and/or the Division of Wildlife Resources, which relate to said Area herein reserved to the Declarant and called Open-Space Sage Grouse Habitat Area, and any such agreements entered into by the Declarant shall be binding upon all present and future property Owners within the Development as well as the Association;

(e) The right of Wasatch County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any road, parking area, walkway, or open area contained with the Property for purposes of providing police and fire protection, garbage removal, and providing other governmental or municipal services; and

(f) The right of the Declarant, any Lot Owner and/or the Association to enforce the provisions of this Declaration.

2.5 **Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Area, if any, and any open-space, as well as any facilities located thereon to the Members of his family, his tenants, or in the event of a sale of said Owner's interest then to the purchaser thereof. The right to the use of the Common Area and open-space, if any, will not be separated from lot ownership, but the two shall be appurtenant.

2.6 **Parking.** Each Owner and his family and/or guests shall park their vehicles of any kind and their snowmobiles and/or boats solely on the applicable Owner's Lot or on the portion of the road immediately in front of the Owner's Lot on the side thereof adjoining the Owner's Lot. No vehicles of any kind or snowmobiles or boats shall be parked anywhere else in the Development.

2.7 **Reservation of Mineral Rights.** All oil, gas and other mineral rights shall be retained by the Declarant, and the same shall not and do not pass with the land.

2.8 **Water Restriction.** Culinary Water shall be supplied to each Lot within the Development. Said water shall be used for culinary purposes only inside the cabin/home, and not for sprinkling of lawns, gardens, etc. outside of said Owner's cabin/home. Culinary water shall be available to the Association Members from the first (1st) day of May through the thirty-first (31st) day of October of each year. Association Members desiring to have water during the Winter in their dwelling shall be required to build their own individual winter water storage system or to personally carry water in with them.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

3.1 **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

3.2 **Voting Rights.** The Association shall have the following 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 vote in behalf of each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any lot.

Class B - The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership in the Association. The Class B Membership shall automatically cease and be converted to 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 equal or exceed the total number of votes held by the Class B Member.
- b. The expiration of twenty (20) years after the date on which this Declaration is filed for record in the office of the County Recorder of Wasatch County, Utah.

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

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Development, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree with each other and with the Association to pay to the Association; (1) annual assessments or charges, and (2) special assessments for such purposes as determined from time-to-time by the Association. Such assessments shall be established and collected as hereinafter provided. Such assessments shall be fixed, established and collected from time to time as provided in this Article IV. In addition to the foregoing, any Special Service District created by Wasatch County for any common purpose shall have the authority to make assessments which shall likewise become a

lien on the respective Lots in accordance with the Statutes of the State of Utah, any applicable ordinances of Wasatch County and the rules and regulations of the applicable special service district.

4.2 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, security and welfare of the members of the Association and, in particular, for the improvement and maintenance of the properties, common areas, roads, wells, reservoirs, lagoons, utility delivery systems, lines, pipes, and equipment, together with costs of obtaining and/or leasing water and/or water rights, together with improvement and maintenance of facilities installed or constructed for such purposes (collectively "Common Facilities"), together with snow removal from common roads within and/or to or from the Development (if approved by the members), insurance on the common area and for the liability protection of the Trustees, and for any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation; provided, however, that no such assessments shall be used for the initial construction and improvement of the Common Areas.

4.3 **Regular Assessments.** The amounts and due dates of regular assessments shall be determined by the Trustees, based upon advance estimates of the Association's cash requirements for the fiscal year for which the assessment is levied, giving due consideration to the current costs and future needs of the Association, including, without limitation, expenses arising out of or connected with the maintenance and improvement of the Common Facilities.

4.4 **Special Assessments.** In addition to the regular assessments, the Association may in any fiscal year and at any time levy special assessments in amounts to be determined by the Trustees, for the purpose of paying, in whole or in part, the cost of construction, reconstruction, repair or replacement of capital improvements, costs of repair, replacement or improvement of any of the Common Facilities, for acquisition of water rights and/or for such other purpose as may be beneficial to the Members, provided that any such special assessment shall be approved by a majority of the total votes of the Association.

4.5 **Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred-fifty Dollars (\$150.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without assent by vote of the majority of the Members of the Association in accordance with the notice and other provisions provided in the Bylaws of the Association.

(b) The Board of Trustees of the Association may fix the annual assessment at an amount not in excess of the maximum.

4.6 **Exempt Property.** All properties dedicated to, and accepted by, a local public authority shall be exempt from the assessments created herein; however, no land or improvements devoted to dwelling use shall be exempt from said assessments.

4.7 **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all sold Lots except for unusual exposure or other unusual conditions, and may be collected on a monthly basis.

4.8 **Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all sold Lots on the first day of the month following the conveyance of the Common Area to the Association. Notwithstanding the foregoing or anything herein to the contrary, there shall be no assessments made to the Declarant in connection with unsold lots for a period of two years following the conveyance of the common areas to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Trustees of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Trustees of the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency, both before and after judgment, at the rate of twelve percent (12%) per annum.

4.9 **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

4.10 **Creation of Lien.** All sums assessed to Owners of any Lots within the Development pursuant to the provisions of this Article, together with late charges and interest thereon as provided herein, and all costs of collection including reasonable attorney's fees shall automatically be secured by a lien on such Lot in favor of the Association. To evidence and provide notice of a lien for sums assessed pursuant to this Article, the Trustees may, but shall not be obligated to, prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the Wasatch County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the assessment.

4.11 **Personal Obligation of Owner.** The amount of any annual or special assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same and may be brought in the same action as one seeking to foreclose the lien as an alternative claim. In the event of any suit to recover a money

judgment of unpaid assessments hereunder, the applicable Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney's fees.

4.12 **Liability of Purchaser.** The personal obligation of an Owner to pay unpaid assessments against his Lot as described above shall not pass to successors in title unless assumed by them. Provided, however, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the Lot unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

4.13 **Foreclosure.** No action shall be brought to foreclose the lien for delinquent assessments nor shall any charge to proceed be given under the power of sale herein provided less than ninety (90) days after the date a notice of claim of lien is deposited in the United States Mail, certified or registered, addressed to the Owner at his address on the County records or as set forth in the records of the Association, and such notice is recorded in the Wasatch County Recorder's Office. A lien for delinquent assessments may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of private sale of deeds of trust or in accordance with judicial foreclosure of deeds of trusts or mortgages or in any other manner permitted by law. In any exercise of a power of sale remedy, the Association may appoint its attorney or any title insurance company to act as the trustee in connection with such sale and said trustee shall have all of the rights and powers necessary to convey title to the Lot to the purchaser at any foreclosure sale. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorney's fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Owner shall be personally obligated to pay any deficiency remaining due.

4.14 **Curing the Default.** Any Owner may cure any default at any time prior to any foreclosure sale by paying the amount of the delinquent assessment, accrued interest, all costs and expenses incurred and the costs and expenses of preparing and recording any notice of release of lien and dismissal of any lawsuit. Upon the timely curing of any default for which a notice of claim of lien is made by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice.

4.15 **Remedies Cumulative.** The right to pursue a personal action to recover the amount of the delinquent assessment and the right to foreclose the assessment lien shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law. All remedies provided herein are cumulative and the exercise of any remedy at any one time shall not preclude the exercise of any other remedy either concurrently or at any other time.

4.16 **Failure to Enforce Not a Waiver.** The failure of the Association to enforce any of the covenants contained in the Declaration shall not constitute a waiver of the right to enforce the same thereafter at any time.

4.17 **Mortgage Protection.** In the event an Owner neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration, the Association shall at any time thereafter give written notice of such fact to the holder of any first mortgage (or trust deed) covering such Owner's Lot.

All assessments of the Association and the lien thereof shall be subordinate to the lien of any first mortgage or deed of trust on a Lot. Each holder of a first mortgage lien on a Lot who comes into possession of the Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such entity comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots including the mortgaged Lot.

Unless all holders of first mortgages (or trust deeds) on the individual Lots have given their prior written approval, neither the Association nor any other party shall be entitled to:

- a. Alter the provisions of Section 4.7 of Article IV hereof (pertaining to uniform rate of assessment);
- b. Partition or subdivide any Lot or the Common Areas or dedicate or transfer all or any part of the Common Areas; or
- c. By act or omission seek to abandon or materially alter the arrangement which is established by this Declaration.

ARTICLE V

GENERAL USE RESTRICTIONS

All real property within the Development shall be held, used and enjoyed subject to the following limitations and restrictions:

5.1 **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 Lots and living units. No admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas.

5.2 **Use of Lots and Living Units; Nuisance.** All Lots are intended to be improved with living units and are restricted to such use. Each living unit shall be used only as a single-family residence. No Lot or living unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other living unit, so as to create a nuisance or interfere with the rights of any Owner, or in any way which would result in an increase in the cost of any insurance covering the Common Areas.

5.3 **Leases.** The terms and provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association are binding on any lessee of any Lot in the Development. Any lease agreement between an Owner of a Lot within the Development and a lessee thereof shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and 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. All leases shall be required to be in writing. Other than the foregoing, there is no restriction on the right of any Lot Owner to lease his/her Lot or unit.

5.4 **Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

5.5 **Rubbish; Annoying Odors, Lights and Sounds.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot or property within the Development and no odors shall be permitted to arise therefrom so as to render any such Lot or property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or property in the vicinity thereof or to its occupants. All trash shall be kept in covered containers kept for that purpose which shall be kept sealed to prevent animals from gaining entrance to the containers. Unless Wasatch County, a special service district created for this purpose, or the Association provides trash removal, all trash from any Lot must regularly be removed from the Development by that Lot owner at that Owner's expense. Waste removal shall occur at least as often as necessary to prevent noxious odors from arising and/or from insects and pests from accumulating. If common garbage receptacles are provided by either the Association, Wasatch County or any special service district for the disposal of individual waste, such waste shall be regularly deposited therein for removal from the Development. No noise or other nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devises (other than security devises used exclusively for security

or fire protection purposes) shall be located, used or placed on any property within the Development without the prior written approval of the Association. No outside generators shall be permitted on any Lot except solely for construction purposes. No light shall be emitted from any Lot which is unreasonably bright or which causes unreasonable glare, except where such lights (including free standing lights and motion lights) are deemed absolutely necessary by the Committee for safety and security purposes. Any light used to illuminate garages, patios, parking areas or for other purposes shall be so arranged as to reflect light away from adjacent Lots.

5.6 **Animals.** No animals of any kind shall be raised, bred or kept except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose on the property. Such animals as are permitted shall be strictly controlled and kept pursuant to the Wasatch County ordinance prohibiting dogs from being off the premises of the owner and not under control. No livestock shall be permitted within this Development except horses on a temporary basis when the Owner is present. All permitted animals shall be restricted to the Owner's premises or shall be under the Owner's immediate supervision and control. In addition, each Owner shall at all times comply with all applicable ordinances of Wasatch County with regard to animals of any kind in the Development.

5.7 **Temporary and Other Structures.** No structures of a temporary nature, basement house, tent, shack, garage, barn or other out-buildings shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on said property at any time. No old or secondhand structures shall be moved onto any of the Lots within the Development, it being the intention hereof that all dwellings and other buildings be erected on said Lots, or within said subdivision, shall be new construction and of good quality, workmanship and materials.

5.8 **Unightly Articles.** No unsightly articles shall be permitted to remain so as to be visible from adjoining property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be screened from view from the road; service areas, storage piles, compost piles and facilities for hanging drying or airing clothing or household fabrics shall be appropriately screened from view; and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or appropriately screened from view.

5.9 **No Further Subdividing.** No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof (excluding Declarant); provided, however, that nothing herein shall be deemed to prevent the transfer or sale of any Lot or living unit to more than one person to be held by them as tenants

in common, joint tenants, tenants by the entirety or as community property or any sale or transfer to a legal entity.

5.10 **Signs.** Except for any signs identifying the Development installed by the Declarant or the Association, no sign of any kind shall be displayed to the public view without the approval of the Architectural Committee, except such signs as may be used by Declarant in connection with the sale of Lots in the Development and except such signs of customary and reasonable dimensions as set forth by the Architectural Control Committee as may be displayed on or from a residence advertising the residence for sale or lease. Notwithstanding the foregoing or anything herein to the contrary, nothing herein shall prevent Declarant or its Managers or Members, either in their capacities as Managers or Members or in their individual capacities, from advertising by model cabins, homes, signs, brochures or otherwise on any Lot they own and at entrances to the Development the sale Lots and/or the sale of log or wood homes or any portion thereof or any furniture, furnishings, fixtures and/or equipment for cabins/homes either in this Development or in any other Development.

5.11 **Overnight Parking in Winter.** No vehicles of any kind, including but not limited to, automobiles, trucks, buses, tractor trailers, camping vehicles, boats, boat trailers, snowmobiles, snowmobile trailers, mobile homes, motor homes, two, three and four wheeled motor vehicles or off road vehicles of any type, or other wheeled vehicles shall be permitted to be parked on any street within the Development if snow is on the roads and if the roads within the Development are provided with snow removal from or by any source including by the Association, Wasatch County or any special service district created for this purpose.

5.12 **No Hazardous Activities.** No activities shall be conducted on any property and or improvements constructed on any property within the Development which are or might be unsafe or hazardous to any person or property.

5.13 **Repair of Buildings.** No improvement upon any property within the Development shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair.

5.14 **Access.** All travel within the development is restricted to road right-of-ways. Anyone taking a short-cut between roads is trespassing.

5.15 **Motorbikes, Etc.** All motorcycles, trail bikes, three-wheelers, four-wheelers, automobiles, two, three or four-wheel drive recreational type vehicles are to be operated only on established roads within the Development. The United States Forest Service, the Declarant and the owners of property adjacent to or in the vicinity of this Development may restrict or prohibit access to their respective properties. In such event any unauthorized entrance thereon shall constitute a trespass.

5.16 **Hazardous or toxic Substances.** There shall be no hazardous or toxic substances as those terms are defined under applicable federal, state, county or local laws at any time stored or disposed of on or under any portion of the Development, including without limitation, on or under any Lot or any of the common areas for any purpose.

5.17 **Land Use.** No land within the Development is to be used except for home sites, utilities (including sewer, water, electrical power and telephone), access, ingress and egress and for recreational purposes. No agricultural, industrial or commercial business or enterprise of any kind or nature shall be carried on upon any of the Lots. No sales of any trees, vegetation or soil is permitted within the Development. Notwithstanding the foregoing or anything herein to the contrary, nothing herein shall prevent Declarant or its Managers or Members, either in their capacities as Managers or Members or in their individual capacities, from selling lots in this Development and/or adjoining Developments and/or from selling log or wood homes or any portion thereof or any furniture, furnishings, fixtures or equipment for homes in this Development or for homes in any other Development.

5.18 **Open Fires.** Open fires are permitted only in safe and sanitary pits or containers and must at all times be attended. All fires and ashes shall be completely soaked with water prior to being left unattended. All fireplaces or fire pits must be of cement, masonry, stone or steel construction. If masonry or stone, the material must be cemented together so as to form an air-tight fireproof wall. Loose rocks or dirt pits are not allowed.

5.19 **Wildlife Protection.** All wildlife shall be protected within the boundaries of the Development for the present and continued enjoyment of all parties hereto. The Sage Grouse Habitat Areas adjoining or in close proximity to this Development are by this Declaration of Covenants, Conditions, Restrictions reserved to the Federal Government, and its successors and assigns, for the development, preservation, promotion and management of sage grouse as provided in the written agreement establishing these Grouse Strutting Protection Zones.

5.20 **Water Supply.** No well shall be permitted on any Lot.

5.21 **Fire Hazards.** All fire hazards of any nature shall be removed from the Lot(s) by the Owner thereof at the expense of said Owner, upon request by the Board of Trustees of the Association or its duly appointed agents. In the event said individual Owner fails to comply with any such request within ten (10) days after receipt thereof, the Association shall have the authority, but not the obligation, to take such corrective action as it deems necessary and said individual and Member shall be responsible to reimburse said Association for any and all expenses reasonably incurred by it in removing said fire hazard. Notwithstanding the foregoing, the Association shall have the authority, but not the obligation, to immediately remove any fire hazard from any lot which constitutes an imminent danger of fire. The Association shall have no liability for any action it takes in good faith or fails to take

in connection with the authority granted under this Section. All such costs incurred by the Association shall be a lien on such individual Association Member's Lot(s) and may be foreclosed in the manner provided in Article IV. Fireworks (including, without limitation, sparklers, caps, firecrackers, etc) are prohibited everywhere throughout the Development.

5.22 **Firearms.** The discharging of firearms of any kind (including, without limitation, shotguns, rifles, 22's, BB guns and pellet guns) shall be prohibited in all Portions of the Development. Shotguns, 22's and BB guns shall not be discharged within 500 yards of the Development. Rifles of any kind may not be discharged within 1 mile of the Development.

5.23 **Easements.** A ten (10) foot wide easement for the installation and maintenance of utilities is hereby established along all front, rear and side property lines of each Lot. Each Lot Owner hereby expressly conveys and grants to each other Lot Owner and to the Association easements of access, ingress, and egress over such utility easements for the purpose of maintaining, repairing and installing utility facilities, lines, pipes and cables of every nature and description.

5.24 **Trailers/Motor Homes.** Except as otherwise expressly provided herein, house trailers, mobile homes and motor homes are not permitted on any Lot within this Development. Notwithstanding the foregoing, house trailers or motor homes are permitted on a temporary basis on any Lot for a maximum period of six (6) months during regular and *bona fide* construction of a cabin or home on such Lot for the exclusive purpose of housing those actually working on the cabin or home. This six (6) month period may be extended for up to an additional six (6) months (to include the summer season) on application to the Architectural Control Committee. The Architectural Control Committee may grant such extension provided this Committee, in its sole and absolute discretion, determines that construction of the cabin or home has been regularly progressing on a *bona fide*, good faith basis. During this construction period, the house trailer or motor home may not be left unoccupied for more than one (1) week at any one time. In addition, notwithstanding the foregoing, the Owner of existing Lot with a completed cabins or home thereon may give temporary permission, not to exceed forty-eight (48) hours, for guests to park their house trailers and motor homes on that Owner's Lot. All such house trailers and motor homes shall be parked on the Lot and not on the road.

5.25 **One Lot.** Each Lot covered hereby shall be entitled to have only one residential building constructed thereon, and no Lot covered hereunder shall be subdivided into smaller parcels.

5.26 **Aircraft.** All aircraft, including helicopters and hot air balloons (other than emergency aircraft) are prohibited from landing on and/or taking off from any property, including any lot or common areas within this Development.

5.27 **Wind Turbine Generators Prohibited.** Wind turbine generators are not permitted on any lot, pole, cabin, home, roof or common area in this

Development.

5.28 **Inoperable Vehicles.** No inoperable vehicles of any kind or nature shall be left upon any lot for a period of time in excess of fifteen (15) days. No lot in the Property shall be used for the repair of inoperable vehicles. In the event this provision is violated, the Association shall have the right to remove said inoperable vehicle and charge the owner thereof any and all expenses incurred in doing so;

5.29 **Parking.** Each owner and his family, lessees, guests and invitees shall park their vehicles solely on the respective owner's lot or on the portion of the road immediately in front of the respective owner's lot on the side thereof adjoining the owner's lot. No large trucks having in excess of six wheels, no trailers having more than four wheels and no trucks with trailers having combined wheels in excess of ten shall be allowed to be parked, stored or kept on any lot or on any common areas within this Development except as necessary incident to construction and then not longer than one week. No RVs, ATVs, recreational vehicles, motor homes, snowmobiles or boats shall be parked on any roads or common areas within this Development. No vehicles of any kind, including but not limited to, automobiles, trucks, buses, tractor trailers, camping vehicles, boats, boat trailers, snowmobiles, snowmobile trailers, mobile homes, motor homes, recreational vehicles, motorcycles, motor bikes, off road vehicles of any type, shall be permitted to be parked on any road within the Development which materially obstructs traffic or hinders or impedes snow removal from such roads.

5.30 **Motorbikes, Etc.** All motorcycles, trail bikes, three-wheelers, four-wheelers, automobiles, and all recreational or off-road type vehicles are to be operated only on established roads within the Development, within established speed limits and in a manner so as not to endanger the operators thereof or passengers thereon or therein or others and without damaging the roads. The United States Forest Service, and the owners of property adjacent to or in the vicinity of this Development may restrict or prohibit access to their respective private properties. In such event any unauthorized entrance thereon shall constitute a trespass.

5.31 **Damage to Roads.** Any special damage to the roads from the use of any vehicles of any kind thereon shall be assessed to the applicable lot owner.

5.32 **Off-Highway Rules and Regulations.** The Association shall have authority to adopt rules and regulations for the operation of vehicles, including off-highway vehicles, within this development. Such rules and regulations may include establishing and posting speed limits on the roads within this Development and otherwise providing for the safety of off-highway vehicles and their passengers and the lot owners and their invitees and guests. All vehicles of any type or description shall be operated strictly within the established rules and regulations, including

speed limits in this Development.

5.33 **Noise.** All vehicles used within the Development shall have appropriate operating mufflers and noise restriction devices in good working condition.

5.34 **Exemption of Declarant.** Nothing in this Declaration shall limit the right of Declarant to complete excavation, grading and construction of improvements to any portion of the Development or to any property servicing the Development or to construct additional improvements as Declarant deems advisable in the course of development so long as any Lot remains unsold, or to use any mobile home, trailer, or other structure as a model home or real estate sales or leasing office or as a temporary residence during construction of this or any other development in the area. Further, notwithstanding anything in this Declaration to the contrary, nothing in this Declaration shall prevent Declarant or its Managers or Members, either in their capacities as Managers or Members or in their individual capacities, from advertising by model homes, signs, brochures or otherwise on any lot they own and/or at entrances to the Development the sale lots and/or the sale of log or wood homes and/or any portion thereof or any furniture, furnishings or equipment for homes and/or from selling the same in this Development for this or for any other Development.

ARTICLE VI

ARCHITECTURAL CONTROL

6.1 **Architectural Control Committee.** An Architectural Control Committee ("Committee") consisting of three members shall be created the function of which shall be to insure that all improvements and landscaping within the property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. Until such time as cabins/homes have been built on 50% of the lots within this Development, the Declarant shall appoint two of the three members of the Committee with the third member being appointed by the Board. After 50% of the lots within this Development have had cabins/homes built on them, the Board shall appoint all three members of the Committee. If such a Committee is not appointed the Board shall perform the duties required of the Committee.

6.2. **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all

improvements, construction, landscaping and alterations on Lots within the property conform to and harmonize with the location of this Development and the existing surroundings and structures. The Committee shall have no liability to any lot owner for any action or inaction in connection with the good faith performance of their duties as set forth herein.

6.3 **Land Use and Building Type**. No Lot shall be used except for single family residential purposes. No building shall be erected, altered, placed or permitted on any Lot other than one detached single family dwelling not to exceed two stories in height (exclusive of a *bona fide* basement), a private garage for the Owner's vehicles, boats, snowmobiles, RV's and 4 wheelers and a single storage shed. "Family" is defined to mean persons related by blood, or marriage, by legal adoption, or by operation of law.

6.4 **Approval Procedure**. Any plans and specifications for building upon a Lot by an owner and/or builder must be submitted to the Committee for approval prior to commencing construction. Such approval is conditioned upon compliance with the following procedure:

- a. The Owner/builder signing a statement in form prepared by the Committee indicating that he has read and understood these Covenants, Conditions and Restrictions and is willing to abide by the same and in particular the building restrictions set forth in Article VII hereof;
- b. The Owner/builder submitting:
 - 1) a site layout plan showing the proposed home/cabin as it will be situated on the Lot.
 - 2) finish grade plan specifying elevations of the basement floors, main floors, second floors and roof.
 - 3) specifications for the pitch of the roof and an engineer's design and structural certificate certifying as to the structural integrity of the design and adequacy of the proposed materials specific for the area.
 - 4) specifications for all exterior construction material.
 - 5) one complete set of all exterior colors in the form of samples or color chips, with detailed information as to the location of the color, including logs, siding, trim, roofing material, etc.
- c. The Owner/builder obtaining a construction permit issued by Wasatch

County.

Any subsequent changes, improvements, or alterations in any of the foregoing must be submitted to the Committee for written approval.

Any approval or disapproval must be made in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period, it shall be deemed to have approved the material submitted.

6.5 **Construction Completion.** Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion.

6.6 **No Liability for Damages.** The 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 VI.

6.7 **Exception for Declarant.** The foregoing provisions of this Article VI and the provisions of Article VII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the twenty (20) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Wasatch County, Utah.

VII

BUILDING RESTRICTIONS

7.1 **Building Location.** The location of each home, cabin, driveway and accessory building shall meet all front, rear and side-yard set back requirements of Wasatch County

7.2 **Dwelling Height and Size.** No Lot or parcel of land in the development shall have a building or structure which exceeds a height of two (2) stories above the basement level. For purposes of calculating the maximum stories, the basement must be an actual, *bona fide* basement as determined by the Architectural Control Committee in its sole and absolute discretion to qualify as a basement level and not the first level of the applicable cabin or home. Chimneys, flagpoles, and similar structures are excluded in determining height. The ground floor area of the main structure of any dwelling on any Lot, exclusive of one story open porches/decks and garages, shall not be less than 800 square feet for a one story dwelling and no less than 300 feet on the second floor of a two-story dwelling. No dwelling may be more than two stories exclusive of a *bona fide* basement.

7.3 **Permissible Lot Coverage.** All buildings, including accessory buildings and structures, shall not cover more than forty (40) percent of the area of the Lot or parcel of land.

7.4 **Dwelling Construction.** In order to promote a harmonious development and protect the character of the Development given its location, the following guidelines are set out:

a. Dwelling styles, design, alterations or additions will conform to standards determined by the Architectural Control Committee. No modular, Geodesic Dome, A-Frame or Mansard roof may be constructed or erected in this Development. "Modified A-Frames" having a minimum of six foot walls on four sides are permitted.

b. Exterior construction materials shall be limited to log, natural stone, rough sawn or resawn wood siding or log siding and shall be in earth tones indigenous to the area or commonly used on log or wood homes or cabins. Aluminum siding, T 111 plywood or press board siding are expressly prohibited; however, aluminum soffits are permitted in earth tone colors that blend with the building. Specifications regarding the color, texture, finish and quality for the above will be made available by The Architectural Control Committee.

c. Roof design and strength shall be certified by a licensed engineer and must meet all Wasatch County building codes and ordinances applicable to roofs in the Development. Each roof shall have a minimum pitch of six (6) inches in vertical rise for each twelve (12) inches in horizontal travel.

d. Location of all storage or utility buildings, garbage and refuse containers, air conditioning equipment, clothes drying lines and utility pipes, etc. must be placed at the rear of the dwelling and located on the site in such a manner as not to be conspicuous from the frontage street.

e. Any light used to illuminate garages, patios, parking areas or for any other purposes shall be so arranged as to reflect light away from adjacent residences.

7.5 **Fences.**

a. **Materials.** Fences or walls shall exclusively be of wood pole. No fence or walls of chain link, wire mesh, clump block, vinyl, or unpainted concrete block shall be allowed. Natural stone gate or entry posts are permitted.

b. **Height.** Fences or walls shall not exceed five (5) feet in height.

7.6 **Watering.** In order to protect the water rights for this Development, there can be no watering of outside lawns or grass. The existing water rights permit only domestic and culinary use.

7.7. **Drainage.** There shall be no interference with the established drainage pattern over any property within the Development unless adequate provision is made for proper drainage and is approved by the Committee. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time of the overall grading of this Development including the roads therein, or applicable Lot, as the case may be, is completed.

7.8 **Exterior Lamp Posts.** If desired, any free-standing light fixture located in a front yard shall be of such uniform and standardized design that has been approved by the Architectural Control Committee.

7.9 **Cement Trucks--Damage.** Cement trucks should be cleaned on the building site after delivery of concrete, not on the road, right-of-way or adjacent Lots. Care should be taken to avoid damage to the road surface by cement trucks or other heavy equipment and to keep such equipment from interfering with the proper drainage of the area. Owners and Builders will be held jointly and severally liable and responsible for road damage and for damage to any other Lot or any portion of the Common Area resulting from any construction activities in connection with the applicable Owner's Lot.

7.10 **Lot Clean Up During and After Construction.** Each Lot shall be kept reasonably free from debris, garbage and waste building materials during construction of any building on the Lot. No debris, garbage, waste or building materials, excess or otherwise may be stored, placed or left on any other Lot or on any portion of the Common Areas. Vehicles and equipment must not be stored on any other Lot or on any portion of the Common Areas during construction. Dirt or soil incident to excavation and/or construction must not be placed on any other Lot or on any portion of the Common Areas. Following construction, all debris, garbage, waste or excess building materials must be removed from the Lot and piled dirt shall be leveled consistent with the general terrain of the area.

7.11 **Road Damage Repair.** Each Lot Owner who excavates in any manner into the road or causes any excavation of any kind into the road in this Development shall promptly repair the road at his expense, including compaction, to at least as good a condition as the road was in prior to the excavation.

VIII

MISCELLANEOUS

8.1 **Notices.** Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as a Member or Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing. It shall be the duty and responsibility of each Owner and Member to promptly notify the Association of all changes of address.

8.2 **Rules and Regulations.** The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the property is maintained and used in a manner consistent with the interest of the Owners.

8.3 **Amendment.** Any amendment to this Declaration shall require the affirmative vote of at least a majority of all Class A membership votes in accordance with the notice and other provisions of the Bylaws of the Association; and, so long as the Class B membership exists, the written consent of Declarant. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Declarant if the Class B membership then exists). In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred.

8.4 **Declarant's Rights Assignable.** The rights of Declarant under this Declaration or in any way relating to the Property may be assigned at the sole and absolute discretion of Declarant.

8.5 **Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to

effect all of its purposes.

8.6 **Covenants to Run With Land.** This Declaration and all of the provisions hereof shall constitute covenants to run with the land or equitable servitude, 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 Lot or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Lot or living unit shall comply with, and all interests in all Lots or in the Commons 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 Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

8.7 **Enforcement.** The Association, and/or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, and management policies, and reservations, and charges now or hereafter imposed by the provisions of this Declaration, and in addition to all other remedies, shall be entitled to recover its or their reasonable attorney's fees and costs incurred. In the event for any reason any Owner fails to comply with the provisions of this Declaration within ten (10) days after written notice so to do, the Association may, but shall not be obligated to, take whatever action is necessary to bring the lot or any building or improvement thereon into compliance. Each non-complying Owner and/or each Owner of a non-complying lot shall be jointly and severally liable to the Association for all costs, fees (including reasonable attorney's fees) and expenses of any kind or nature incurred by the Association in causing compliance and/or bringing a non-complying lot and/or any improvement thereon into compliance with this Declaration. All such costs, fees (including reasonable attorney's fees) and expenses shall be a lien on the applicable lot in favor of the Association and shall subject the lot to foreclosure in the manner provided for foreclosure of delinquent assessments. The Association's remedies are cumulative, and the exercise of any remedy by the Association at any time shall not preclude the exercise of any other remedy, either simultaneously or at any other time. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right so to do thereafter or give rise to any claim of estoppel. The Association shall not have any liability of any kind or nature for failure to enforce the terms, provisions, restrictions, covenants and/or conditions of this instrument.

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

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto executed this Instrument this 2 day of ~~November~~ ^{December}, 2008.


David R. Hales, President and Director

STATE OF UTAH)

J. Edward Collard

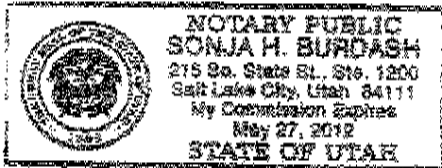
J. Edward Collard

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 24 day of November, 2008 by J. Edward Collard in his capacity as a Board Member of Declarant.

Sonja Burdash

Notary Public



Cecelia Bowman
Cecelia Bowman

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 4 day of ^{December} ~~November~~, 2008 by Cecelia Bowman in her capacity as a Board Member of Declarant.

Brittany Fitch
Notary Public

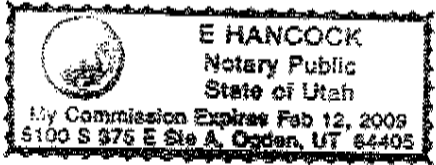


Cassie G. Samples
Cassie G. Samples

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 29 day of November, 2008 by Cassie G. Samples in her capacity as a Board Member of Declarant.

[Signature]
Notary Public



Rodney Beckstead
Rodney Beckstead

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 17 day of December, 2008 by Rodney Beckstead in his capacity as a Board Member of Declarant.

Alice N. Bahr
Notary Public

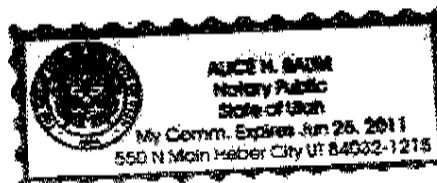


EXHIBIT "A"
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
STRAWBERRY LAKEVIEW DEVELOPMENT

LEGAL DESCRIPTION

The real property covered by and subject to the Declaration of Covenants, Conditions and Restrictions to which this Exhibit "A" is attached is located in Wasatch County, State of Utah and is more particularly set forth on the recorded plat of Strawberry Lakeview, LLC recorded August 13, 1979¹⁹⁹⁶ as Entry Number 196328 in Book 356 at Pages 139-198 in the Official Records of the Wasatch County Recorder. The Boundary Description of the Strawberry Lakeview, LLC development is as follows:

*DSV-2001 through
DSV-2095*

BOUNDARY DESCRIPTION

Beginning at a point which is East 149.68 feet and North 1513.71 feet from the Southeast corner of Section 31, Township 3 South, Range 10 West, Uintah Special Base and Meridian; thence North 52°39'52" West 25.11 feet; thence along the arc of a 74.99 foot radius curve to the left, 34.89 feet, through a central angle of 26°39'23", the chord of which bears North 65°59'34" West 34.57 feet to a fenceline; thence along said fenceline the following 12 calls: South 44°03'08" West 211.52 feet; thence South 59°52'26" West 196.10 feet; thence South 74°06'25" West 672.63 feet; thence South 64°30'35" West 340.25 feet; thence South 45°30'44" West 322.33 feet; thence South 35°30'09" West 297.21 feet; thence South 22°27'32" West 218.86 feet; thence South 10°52'18" West 677.18 feet; thence South 27°13'43" West 213.90 feet; thence South 65°02'45" West 871.19 feet; thence South 25°11'18" West 566.95 feet; thence South 09°43'19" West 259.74 feet; thence leaving said fenceline North 64°32'01" West 536.92 feet; thence South 25°28'00" West 50.00 feet; thence North 64°32'01" West 320.00 feet; thence North 25°27'59" East 710.00 feet; thence North 42°49'08" East 399.81 feet; thence North 65°12'03" East 868.78 feet; thence North 10°32'39" East 168.49 feet to a point on curve of a roadway within the subdivision; thence along the southwesterly line of said roadway and along the arc of a 225.00 foot radius curve to the right 70.25 feet, through central angle of 17°53'19", the chord of which bears North 58°32'34" West 69.96 feet; thence North 49°35'54" West along said southwesterly line 249.56 feet; thence along said line and along the arc of a 409.99 foot radius curve to the right 241.15 feet, through a central angle of 33°42'02", the chord of which bears North 32°44'55" West 237.69 feet; thence leaving said roadway North 87°22'59" West 400.45 feet; thence North 06°00'00" West 300.00 feet; thence South 84°00'00" West 590.00 feet; thence North 06°00'00" West 600.00 feet; thence North 84°00'00" East 945.00 feet; thence North 37°00'00" East 1400.00 feet; thence East 90.76 feet to a point on a curve on the southwesterly line of the water tank road along the northeasterly side said subdivision; thence along said southwesterly line and along the arc of a 224.98 foot radius curve to the left 170.03 feet, through a central angle of 43°18'08", the chord of which bears South 46°13'43" East 166.01 feet; thence leaving said road South 43°38'17" West 87.35 feet; thence South 39°58'13" East 174.69 feet; thence South 58°56'12" East 995.98 feet; thence North 35°30'51" East 238.80 feet to the northeasterly line of said water tank road; thence South 54°29'13" East along said northeasterly line 770.36 feet; thence along the arc of a 15.00 foot radius curve to the left 16.11 feet, through a central angle of 61°33'16", the chord of which bears South 85°15'50" East 15.35 feet to a point on a curve of the northwesterly line of the entrance road into said subdivision; thence along said northwesterly line and along the arc of a 677.03 foot radius curve to the left 126.00 feet; through a central angle of 10°39'49", the chord of which bears North 58°37'37" East 125.82 feet; thence North 53°17'42" East along said northwesterly line 50.03 feet; thence along said line and along the arc of a 124.99 foot radius curve to the right 161.52 feet, through a central angle of 74°02'26", the chord of which bears South 89°41'05" East 150.51 feet; thence along said line South 52°39'52" East 25.11 feet; thence South 37°19'00" West 50.03 feet to the point of beginning.

Area = 134.483 Acres

Basis bearing: South 89°37'59" West along the Section line from the Southeast corner of Section 31, to the South $\frac{1}{4}$ corner of said section.

SUBJECT TO all easements, liens, restrictions, agreements, CC&R's (Covenants, Conditions and Restrictions), encroachments, encumbrances, assessments and rights of way of record, observable on the land, which may be disclosed by a survey of the Property, enforceable at law or in equity, or created or existing by or in connection with Grantee and/or persons in possession,

ALSO SUBJECT TO: (a) current year's taxes; and (b) charges, assessments, connection and other fees which may be imposed by any governmental authority and/or special improvement district having jurisdiction including, without limitation, Wasatch County, County, and all applicable special service and/or special improvement districts.

FIRST AMENDED AND RESTATED BYLAWS OF
STRAWBERRY LAKEVIEW OWNERS' ASSOCIATION
A Utah Nonprofit Corporation

These First Amended and Restated Bylaws are adopted by the Members under the provisions of the Utah Nonprofit Corporation Act (the "Act").

ARTICLE I

DEFINITIONS

1.1 **"Association"** shall mean and refer to this corporation which is Strawberry Lakeview Owners Association, a Utah non-profit corporation, its successors and assigns.

1.2 **"Common Area"** shall mean and refer to that part of the Property which is not included within the lots as described on the Plat, including all improvements other than utility lines now or hereafter constructed or located thereon.

1.3 **"Declarant"** shall mean and refer to Strawberry Lakeview, L.L.C. a Utah Limited Liability Company.

1.4 **"Development"** shall mean and refer to that certain real property located in Wasatch County, Utah as described by the Plat as defined herein.

1.5 **"Grouse Strutting Protection Zones"** shall mean and refer to those properties described below which have or will be transferred to the United States Forest Service for preservation of Grouse strutting grounds pursuant to the agreement between the Declarant, Strawberry Lake Estates, Inc., Wasatch County, and the United States.

1.6 **"Lot"** shall mean and refer to any plot of land shown upon any recorded final plat map of the Properties with the exception of the Common Area.

1.7 **"Member"** shall mean and refer to every person who holds membership in the Association. Membership in the Association shall be limited to Owners and Declarant.

1.8 **"Owner"** shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Wasatch County, Utah) of a fee or an undivided fee interest in any lot in the Development. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a

beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.9 **"Plat"** shall mean and refer to the executed subdivision plat of the Development executed and acknowledged by Declarant on the 6th day of August, 1997, prepared and certified by Robert D. Gunnell (a duly registered Utah Land Surveyor holding Certificate No. 142870) and filed for record in the office of the County Recorder of Wasatch County, Utah on August 13th, 1997.

1.10 **"Property"** shall mean and refer to that certain real property located in Wasatch County, State of Utah and more particularly described on Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II

GENERAL PLAN OF OWNERSHIP

2.1 **Name.** The name of this Corporation is Strawberry Lakeview Owners' Association, Inc., hereinafter referred to as the "Association."

2.2 **Principal Office.** The principal office of this corporation is 2843 South 450 West, Bountiful, Utah 84010. The principal office of this corporation may be changed from time-to-time by the Board of Trustees.

2.3 **Bylaws Application.** The provisions of these Bylaws are applicable to the Development known as Strawberry Lakeview located near Strawberry Reservoir, Wasatch County, Utah. All present and future Owners and their tenants, future tenants, employees and any other person that might use the property in or facilities of the Development in any manner, are subject to the regulations set forth in these Bylaws and in the Declaration of Covenants, Conditions and Restrictions ("the Declaration") recorded or to be recorded in the Office of the Box Elder County Recorder and applicable to the Property.

The mere Acquisition or rental of any Lot or Unit in the Properties or the mere act of occupancy of any Lot in the Properties will signify that these Bylaws are accepted, ratified and will be complied with.

ARTICLE III

QUORUM AND VOTING RIGHTS

3.1 **Voting Rights.** Membership and voting rights of the Association shall be as set forth below and in the Declaration.

3.2 Quorum. The Members that are represented either in person or by proxy for any purpose at any annual, regular or special meeting of the Members constitute a quorum for action on any matter.

3.3 Proxies. A Member entitled to vote may vote or otherwise act in person or by proxy. A person may appoint a proxy by (a) signing an appointment form, either personally or by the member's attorney-in-fact, or (b) by transmitting a telegram, facsimile or other electronic transmission providing a written statement of the appointment to the proxy or to the Corporation. An appointment transmitted under subsection "(b)" shall set forth or be transmitted with written evidence from which it can be determined that the Member transmitted or authorized the transmission of the appointment. An appointment of a proxy is valid for 11 months unless a shorter period is provided in the appointment form or transmittal. An appointment of a proxy is revocable by the Member at any time for any reason. An appointment of proxy is revoked by the person appointing the proxy by the person appointing the proxy attending any meeting and voting in person; or by signing and delivering to the Secretary or other person authorized to tabulate votes a more current appointment or a writing stating that the appointment of proxy is revoked.

3.4 Action by the Members. On all matters, the Class A votes and the Class B votes shall be totaled and combined in determining the action of the Members. On all matters, the action on a matter, other than election of Directors, is approved if the total votes cast favoring the action exceed the total votes cast opposing the action and shall constitute the action of the Members. In an election of multiple Directors, that number of candidates equaling the number of Directors to be elected, having the highest number of votes cast in favor of their election, is elected to the Board. When only one Director is being voted upon, the candidate having the highest number of votes cast in his or her favor is elected to the Board. There shall be no cumulative voting.

3.5 Action without a Meeting. Any action that may be taken at any annual, regular or special meeting of Members may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the Members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted. Unless the written consents of all Members entitled to vote have been obtained, notice of any Member approval without a meeting shall be given at least ten (10) days before the consummation of the transaction, action, or event authorized by the Member action to those Members entitled to vote who have not consented in writing. Such notice shall contain or be accompanied by the same material that would be required to be sent in a notice of meeting at which the proposed action would have been submitted to the Members for action. Any Member giving a written consent may revoke the consent by a signed writing describing the action, stating that the Member's prior consent is revoked; and that is received by the Corporation prior to the effectiveness of the action. A Member action taken pursuant to this section is not effective unless all written consents on which the Corporation relies are received by the Corporation within a six (6) day period and not properly revoked. Notwithstanding the foregoing, Directors may not be elected by written consent except by unanimous written consent of all Members entitled to vote for the

election of Directors. Any action taken under this section has the same effect as action taken at a meeting of Members and may be so described in any document.

3.6 Action by Written Ballot. Written ballots may be used at any annual, regular or special meeting of the members, if the Board so determines or if these Bylaws so require. Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Corporation delivers a written ballot to every Member entitled to vote on the matter. Such written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when: (a) the time by which all ballots must be received by the Corporation has passed so that a quorum can be determined; and (b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The number of votes cast by written ballot pursuant to this section constitutes a quorum for action on the matter.

All solicitations for votes by written ballot shall: (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter other than election of Directors; (c) specify the time by which a ballot must be received by the Corporation in order to be counted; and (d) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

A written ballot may not be revoked. A written ballot may also be used in connection with any annual, regular, or special meeting of Members and shall be counted equally with the votes of members in attendance at any meeting for every purpose.

3.7 Action by Telecommunication. If so determined by the Board of Directors, any or all of the Members may participate in an annual, regular, or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting.

3.8 Consent of Absentees. The transactions of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though held at a meeting duly held after regular call and notice, if a quorum is present, either in person or by proxy and if, either before or after the meeting, each of the Members not present in person or by proxy, signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

3.9 Minutes; Presumption of Notice. Minutes or similar records of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation of the minutes of any such meeting that notice of the meeting was properly given shall be *prima facie* evidence that such notice was given.”

ARTICLE IV

ADMINISTRATION

4.1 **Association Responsibilities.** The association shall have the responsibility of administering the Properties, as set forth in the Declaration including but not limited to approving the annual budget, establishing and collecting all assessments and arranging for the management of the Properties pursuant to an agreement containing provisions relating to the duties, obligations, removal and compensation of the Manager.

4.2 **Place of Meetings of Members.** Meetings of the Members shall be held at the Development or such other suitable place as close thereto as practicable or at such other place as may be designated by the Board of Trustees.

4.3 **Annual Meeting of Members.** The first annual meeting of the Members shall be held on September 20, 1999. Thereafter, the annual meeting of the Association shall be held on the anniversary date of the first annual meeting; provided, however, that should the anniversary date fall on a legal holiday, then such annual meeting of the Members shall be held on the next day thereafter which is not a legal holiday. At each annual meeting there shall be elected, by a ballot of the Members, a Board of Trustees in accordance with the requirements of Section 5 of Article IV of these Bylaws. If the Members so determine at the first or any subsequent annual meeting, Trustees may be elected to staggered terms for continuity of management. Unless a member of the Board of Trustees resigns before the expiration of his term of office, each trustee shall hold his office until his successor has been elected and the first annual meeting involving such successor is held. The term of office of any trustee elected shall be the balance of the unserved term of his predecessor. The Members may also transact such other business of the Association as may properly come before them.

4.4 **Special Meetings of Members.** Special meetings of the Members may be called at any time by a majority of a quorum of the Board of Trustees or upon a petition signed by Members holding at least fifteen percent (15%) of the voting power of each class of the Members, having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof.

4.5 **Notice of Meetings of Members.** Except as otherwise provided in the Declaration, it shall be the duty of the Secretary to mail a notice of each annual or special meeting of Members, stating the purpose thereof as well as the day, hour and place where it is to be held, to each Owner of record at least thirty (30) days but not more than sixty (60) days prior to such meeting. The notice may set forth time limits or speakers and nominating procedures for the meeting. The mailing of a notice, postage prepaid, in the manner provided in this Section shall be considered notice served, after said notice has been deposited in a regular depository of

the United States mail. If no address has been furnished to the Secretary, notice shall be deemed to have been given to a Member if posted in a conspicuous place on the Association property.

4.6 **Adjourned Meetings.** If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either by person or by proxy, may adjourn the meeting to a time not less than thirty-one (31) days nor more than ninety (90) days from the time the original meeting was called, at which meeting the quorum requirement shall be the presence, in person or by proxy, of the Members holding at least twenty-five percent (25%) of the voting power of the Association. The notice of the adjourned meeting shall be given as in the case of an original meeting.

4.7 **Order of Business.** The order of business at all meetings of the Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of elections; (g) election of trustees; (h) unfinished business; and (i) new business. Meeting of Members shall be conducted by the officers of the Association in order of their priority.

4.8 **Action without Meeting.** Any action, which under the provision of the Utah Corporation Code, may be taken at a meeting of the Members, may be taken without a meeting if authorized by a writing signed by a majority of the Members who would be entitled to vote at a meeting for such purpose and filed with the Secretary.

4.9 **Consent of Absentees.** The transactions of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, either in person or by proxy and if, either before or after the meeting, each of the Members not present in person or by proxy, signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

4.10 **Minutes, Presumption of Notice.** Minutes or a similar record of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation of the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

ARTICLE V

BOARD OF TRUSTEES

5.1 **Number and Qualifications.** The property, business and affairs of the Association shall be governed and managed by a Board of Trustees composed of at least five (5) persons, each of whom, except for those appointed and serving as first trustees, must either be an

Owner of a Lot in the Properties or an agent of Declarant, for so long as Declarant owns a Lot in the Properties. The Board of Trustees may increase, by resolution, the authorized number of members of the Board of Trustees; provided, however, that the Owners shall have the sole right to elect the new Board members. Trustees shall not receive any stated salary for their services as Trustees; provided, however that: (1) nothing herein contained shall be construed to preclude any Trustees from serving the Association in some other capacity and receiving compensation thereof, and (2) any Trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

5.2 **Powers and Duties.** The Board of Trustees has the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are now, by law or by these Bylaws, directed to be exercised and done exclusively by the Owners. Except as provided at Section 4 of this Article relating to Management Agent, the Board of Trustees shall not enter into any service contract for a term in excess of one (1) year without the approval of a majority of Owners.

5.3 **Special Powers and Duties.** Without prejudice to such foregoing general powers and duties and such powers and duties as are set forth in the Declaration, the Board of Trustees is vested with and responsible for the following powers and duties:

(a) To select, appoint and remove all officers, agents, and employees of the Association; to prescribe such powers and duties for them as may be consistent with law, with the Articles of Incorporation, the Declaration and these Bylaws; to fix their compensation and to require from them security for faithful service when deemed advisable by the Board of Trustees.

(b) To conduct, manage, and control the affairs and business of the Association and to make and enforce such rules and regulations therefore as may be consistent with the law, with the Articles of Incorporation and these Bylaws, as the Board of Trustees may deem necessary or advisable.

(c) To change the principal office for the transaction of business of the Association from one location to another within the County of Box Elder as provided in Article I hereof; to designate any place within such county for the holding of any annual or special meeting or meetings of Members consistent with the provisions of Article III, Section 2 hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time as the Board of Trustees, in its sole judgment, may deem best, provided that such seal shall, at all times, comply with the provision of Utah law.

(d) To borrow money and to incur indebtedness for the purposes of the Association and to cause to be executed and delivered therefore, in the Association's name, Promissory Notes, bonds, debentures, Deeds of Trust, Mortgages, pledges, hypothecations, or other evidences of debt and securities therefore.

(e) To fix and levy, from time to time, Assessments, Special Assessments and Reconstruction Assessments upon the Owners, as provided in the Declaration; to fix and

levy, from time to time in any fiscal year, Capital Improvements; to determine and fix the due date for the payment of such assessments and the date upon which the same shall become delinquent; provided, however, that such assessments shall be fixed and levied only to provide for the payment of the expenses of the Association and of taxes and assessments upon real or personal property owned, leased, controlled, or occupied by the Association, or for the payment of expenses for labor rendered or materials or supplies used and consumed, or equipment and development of such property, or for the payment of any and all obligations in relation thereto, or in performing or causing to be performed any of the purposes of the Association, for the general benefit and welfare of its Members, in accordance with the provisions of the Declaration. The Board of Trustees may provide, or cause to be provided, adequate reserves for replacements as it shall deem to be necessary or advisable in the interest of the Association or welfare of its Members. The funds collected by the Board of Trustees from the Members, attributable for replacement reserves, for maintenance, recurring less frequently than annually and for the Owners and shall not be co-mingled with other assessments collected from the Owners. Disbursements from such trust reserve fund shall be made only in accordance with the provisions of the Declaration. Such Assessments, Reconstruction Assessments, Special Assessments and Capital Improvement Assessments shall be fixed in accordance with the provisions of the Declaration. Should any Owner fail to pay such assessments before the delinquency, the Board of Trustees, in its discretion, is authorized to enforce the payment of such delinquent assessments as provided in the Declaration.

(f) To enforce the provisions of the Declaration covering the Properties, these Bylaws or other agreements of the Association.

(g) To contract for and pay fire, casualty, errors and omissions, liability, malicious mischief vandalism, liquor liability and other insurance, insuring the Owners, the Association, the Board of Trustees and other interested parties, in accordance with the provisions of the Declaration, the Board of Trustees deems advisable, which may include, without limitation, medical expenses of persons injured on the Common Area and to bond the agents and employees of any management body, Trustees shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board of Trustees on behalf of the Association.

(h) To contract for and pay maintenance, gardening, utilities, materials and supplies and services relating to the Common Area and to employ personnel necessary for the operation of the Properties, including legal and accounting services, and to contract for and pay for improvements and any recreational facilities on the Common Area. In case of damage by fire or other casualty to the Common Area, if insurance proceeds exceed TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS, or the cost of repairing or rebuilding exceeds available insurance proceeds by more than FIVE THOUSAND (\$5,000.00) DOLLARS, then the Board of Trustees shall obtain firm bids from two or more responsible contractors to rebuild any portions of the Common Area, in accordance with the original plans and specifications with respect thereto and shall, as soon as possible thereafter, call a special meeting of the Members to consider such bids.

(i) To delegate its powers according to law and subject to the approval of the Members, to adopt these Bylaws.

(j) To grant easements where necessary for utilities and sewer facilities over the Properties to serve the Properties.

(k) To fix, determine and name, from time to time, if necessary or advisable, the public agency, fund, foundation, or corporation which is then or thereafter organized or operated for charitable purposes, to which the assets of this Association shall be distributed upon liquidation or dissolution if the Association has obtained tax exempt status, according to the Articles of Incorporation of the Association. The assets so distributed shall be those remaining after satisfaction of all just debts and obligations of the Association and after distribution of all property held or acquired by the Association under the terms of a specific trust or trusts.

(l) To adopt such Rules and Regulations as the Board of Trustees may deem necessary for the management of the Development, which Rules and Regulations shall become effective and binding after: (1) they are adopted by a majority of the Board of Trustees at a meeting called for that purpose, or by the written consent of such number of trustees attached to a copy of the Rules and Regulations of the Association; and (2) they are posted in a conspicuous place in the Common Area. For so long as Declarant holds or directly controls at least twenty-five percent (25%) of the voting power of the Association, such Rules and Regulations shall not materially affect the rights, privileges, or preferences of any Owner as established by the Declaration, the Articles of Incorporation of the Association, and these Bylaws, without the prior written approval of the Utah commissioner of Real Estate. Such Rules and Regulations may concern, without limitation, use of the Association property, signs, parking restrictions, minimum standards of property maintenance consistent with the Declaration, and the procedure of the Architectural Committee and any other matter within the jurisdiction of the Association as provided in the Declaration; provided, however, that such Rules and Regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation, and these Bylaws.

5.4 **Management Agent.** The Board of Trustees may contract for the Association, a professional management agent at a compensation established by the Board of Trustees to perform such duties and services as the Board of Trustees shall authorize, including but not limited to, the duties listed in Section 3 of this Article IV, provided, however, any such contract shall not exceed three (3) years and may be terminated by either party, without payment of a termination fee, on ninety (90) days written notice.

5.5 **Election and Term of Office.** At the first annual meeting of the Association, and thereafter at each annual meeting of the Members, new trustees shall be elected, by secret written ballot, by a majority of the Owners as provided in these Bylaws. In the event that an annual meeting is not held or the Board of Trustees is not elected thereat, the Board of Trustees may be

elected at a special meeting of the Members held for that purpose. Each trustee shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence. Any person serving as a trustee may be re-elected and there shall be no limitation on the number of terms during which he shall serve.

Notwithstanding the foregoing, whenever: (1) notice is given for an election of trustees of the Board of Trustees; and (2) upon such date, the Members other than Declarant do not have a sufficient percentage of the voting power of the Association to elect at least one trustee through the foregoing cumulative voting procedure, such notice shall also provide for the following special election procedure. Election of one trustee shall be apportioned entirely to the Members other than Declarant. Any person shall be an eligible candidate for the special election upon receipt by the Secretary of a "Declaration of Candidacy" signed by the candidate, at any time prior to the election. Such election shall be by secret ballot unless a majority of the Members other than the Declarant determines otherwise. The person receiving a majority of the votes cast by the Members other than Declarant shall be elected a member of the Board of Trustees in a co-equal capacity with all other trustees. The remaining members of the Board of Trustees shall be elected through the customary cumulative voting procedure outlined above.

5.6 **Books, Audit.** The Board of Trustees shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association, in a manner consistent with generally accepted accounting principles, and at no greater than annual intervals shall obtain an independent certified audit of such books and records. A copy of each such audit shall be delivered to a Member within thirty (30) days after the completion of such audit, upon written request from said Member. A balance sheet and an audited operating (income) statement for the Association shall be distributed to each Member (and to any institutional holder of a first mortgage on a Lot in the Properties, upon request) within sixty (60) days of accounting dates as follows:

(a) An initial balance sheet and an initial operating statement as of an accounting date which shall be the last day of the month closest in time to six (6) months following the date of closing of the first sale of a Lot to a Member;

(b) Thereafter, an annual balance sheet and an annual operating statement as of the last day of the Association's fiscal year.

The operating statement for the first six (6) month accounting period referred to in (a) above shall include a schedule of assessments received or receivable itemized by Lot number and by the name of the person or entity assessed.

5.7 **Vacancies.** Vacancies in the Board of Trustees caused by any reason other than the removal of a trustee by a vote of the Members of the Association shall be filled by vote of the majority of the remaining trustees, even though they may constitute less than a quorum; and each person so elected shall be a trustee until a successor is elected at the next annual meeting of the Members of the Association, or at a special meeting of the Members called for that purpose. A vacancy or vacancies shall be deemed to exist in case of death, resignation removal or judicial

adjudication of mental incompetence of any trustee, or in case the Members fail to elect the full number of authorized trustees at any meeting at which such election is to take place.

5.8 **Removal of Trustees.** At any regular or special meeting of the Members duly called, and one or more of the trustees may be removed, with or without cause, by a majority vote of the Members of the Association and a successor may then and there be elected to fill the vacancy thus created. Any trustee whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. If more than one trustee is to be removed at any one time, each Member may accumulate his votes and vote for or against such removal of one or more of the trustees in the number of votes equal to his share of the voting power as set forth in the Declaration, multiplied by the number of Trustees sought to be removed. Where the entire Board of Trustees is not removed at one time, no trustee shall be removed if the number of votes cast against his removal exceeds the quotient arrived at when the total number of Members entitled to vote is divided by one plus the authorized number of trustees. If any or all of the trustees are so removed, new trustees may be elected at the same meeting. Notwithstanding the foregoing, any trustee who has been elected to office solely by the votes of Members other than Declarant pursuant to Section 5 of this Article IV may be removed from office prior to the expiration of his term of office, only by the vote of at least a simple majority of the voting power residing in Members other than Declarant.

5.9 **Organization Meeting.** The first regular ("organization") meeting of a newly elected Board of Trustees shall be held within ten (10) days of election of the Board of Trustees, at such place as shall be fixed and announced by the trustees at the meeting at which such trustees were elected, for the purpose of organization, election of officers and the transaction of other business. No notice shall be necessary to the newly elected trustees in order to legally constitute such meeting, provided a majority of the whole Board of Trustees shall be present.

5.10 **Other Regular Meetings.** Other regular meetings of the Board of Trustees shall be open to the Members and may be held at such time and place within the Properties as shall be determined, from time to time, by a resolution adopted by a majority of a quorum of the trustees; provided, however, that such meeting shall be held not less frequently than quarterly.

Notice of regular meetings of the Board of Trustees shall be given to each trustee, personally or by mail, telephone or telegraph, at least seventy-two (72) hours prior to the date named for such meeting and shall be posted at a prominent place or places within the Common Area.

5.11 **Special Meetings.** Special meeting of the Board of Trustees shall be open to all Members and may be called by the President (or, if he is absent or refuses to act, by the Vice President) or by any two (2) trustees. At least seventy-two (72) hours notice shall be given to each trustee, personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and the purpose of the meeting and shall be posted at a prominent place or places within the Common Area. If served by mail, each such notice shall be sent, postage prepaid to the address reflected on the records of the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. On the second day after it is deposited in a

regular depository of the United States mail as provided herein. Whenever any trustee has been absent from any special meeting of the Board of Trustees, and entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such trustee, as required by law and as provided herein.

5.12 **Waiver of Notice.** Before or at any meeting of the Board of Trustees, any trustee may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a trustee at any meeting of the Board of Trustees shall be a waiver of notice by him of the meeting of the Board of Trustees, no notice shall be required and any business may be transacted at such meeting. The transactions of any meeting of the Board of Trustees, however called and noticed or wherever held after regular call and notice, if a quorum be present, and if, either before or after the meeting each of the trustees not present signs such a written waiver of the notice, a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.

5.13 **Quorum and Adjournment.** Except as otherwise expressly provided herein, at all meetings of the Board of Trustees, a majority of the trustees shall constitute a quorum for the transaction of business and the acts of the majority of the trustees present at a meeting at which a quorum is present shall be the acts of the Board of Trustees. If, at any meeting of the Board of Trustees there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

5.14 **Action without Meeting.** The trustees shall have the right to take any action, in the absence of a meeting, which they could take at a meeting by obtaining the vote or written consent of all of the trustees. Any action so approved shall have the same effect as though taken at a meeting of the Board of Trustees.

5.15 **Committees.** The Board of Trustees, by resolution may, from time to time, designate such committees as it shall desire and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee shall provide for the appointment of its members, as well as a chairman; shall state the purposes of the committee and shall provide for reports, termination and other administrative matters as deemed appropriate by the Board of Trustees.

ARTICLE VI

Officers

6.1 **Designation.** The principal officers of the Association shall be a President, a Vice President, and Secretary and a Treasurer, all of whom shall be elected by the Board of Trustees. The Board of Trustees may appoint an Assistant Treasurer and an Assistant Secretary, and such other officers as in their judgment, may be necessary. Officers other than the President

need not be Trustees. The office of the Secretary and the office of the Treasurer may be held by the person but the office of President and Secretary may not be held by the same person.

6.2 **Election of Officers.** Officers are elected by an affirmative vote of the majority of the entire Board of Trustees. Election of officers must be held at any regular meeting of the Board of Trustees, or at any special meeting of the Board of Trustees called for that purpose. Each officer shall hold his position until his successor has been elected or until death, resignation, removal or judicial adjudication of mental incompetence. A person elected shall take office upon his acceptance or at any later time specified by the majority of the Board of Trustees. The secretary shall keep a record of the names of all current officers of the Owner's Association.

6.3 **Removal of Officers.** Upon an affirmative vote of a majority of the entire Board of Trustees, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Trustees or at any special meeting of the Board of Trustees called for such purpose. Any officer may resign at any time by giving written notice to the Board of Trustees or to the President or Secretary of the Association. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and unless otherwise specified in said notice, acceptance of such resignation by the Board of Trustees shall not be necessary to make it effective.

6.4 **Compensation.** Officers, agents, and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board of Trustees. Appointment of any officer, agent or employee shall not, of itself, create contractual rights of compensation for services performed by such officer, agent or employee, provided that no officer, employee or trustee of Declarant or trustee of Declarant or any affiliate of Declarant may receive any compensation.

6.5 **President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Trustees. He shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power, subject to the provisions of the Article V, Section 16, to appoint committees from among the Members from time to time as he may, in his discretion, decide is appropriate, to assist in the conduct of the affairs of the Board of Trustees, have general supervision, direction and control of the business of the Association. The President shall be, *ex officio*, a member of all standing committees and he shall have such other powers and duties as may be prescribed by the Board of Trustees or these Bylaws.

6.6 **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent, disabled, refuses or is unable to act. If neither the President nor the Vice President is able to act, the Board of Trustees shall appoint some other member of the Board of Trustees to do so on an interim basis. The Vice President shall also perform such other duties as shall, from time to time, be imposed upon him by the Board of Trustees or these Bylaws or the Articles of Incorporation of the Association.

6.7 **Secretary**. The Secretary shall keep the minutes of all meetings of the Board of Trustees and minutes of all meetings of the Association at the principal office of the Association, or at such other place as the Board of Trustees may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board of Trustees may direct; and the Secretary shall, in general, perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notices of meetings of the Members of the Association and of the Board of Trustees required by these Bylaws or by law to be given. The Secretary shall maintain a book of record Owners listing the names and addresses of the Owners as furnished the Association and such books shall be changed only at such time as satisfactory evidence of a change in ownership of a Lot is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board of Trustees.

6.8 **Treasurer**. The Treasurer shall have responsibility of Association funds and securities and shall be responsible for keeping or causing to be kept full and accurate accounts, tax records and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board of Trustees. The Treasurer shall co-sign all checks and promissory notes on behalf of the Association as may be ordered by the Board of Trustees, in accordance with the Declaration, shall render to the President and Board of Trustees, upon request, an account of all of his transactions as Treasurer and of the financial condition of the Association and shall have such other powers and perform such other duties as may be prescribed by the Board of Trustees or by these Bylaws.

ARTICLE VII

OBLIGATIONS OF OWNERS

7.1 **Assessments**.

(a) All owners are obligated to pay, in accordance with the provisions of the Declaration, all assessments imposed by the Association, to meet all expenses of the Association, which may include, without limitation, a liability insurance policy premium and an insurance premium for a policy to cover repair and reconstruction work in case of hurricane, fire, earthquake or other hazard, as more fully provided in Article IV, Section 3 of these Bylaws. Except as otherwise provided in the Declaration with respect to the Collection of Special Assessments, the assessments shall be made equally among the Lots owned.

(b) All delinquent assessments shall be enforced, collected or foreclosed in the manner provided in the Declaration.

(c) Assessments as to any Owner of a Lot shall commence to run when the residential structure thereon is substantially complete and ready for occupancy.

7.2 **Maintenance and Repair.**

(a) Every Owner must perform promptly, at his sole cost and expense, all maintenance and repair work on his Lot as required under the provisions of the Declaration. As further provided in the Declaration, all plans for alterations and repair of improvements on the Lots within the Properties must receive the prior written consent of the Architectural Committee. The Architectural Committee shall establish reasonable procedures for the granting of such approval, in accordance with the Declaration.

(b) As further provided in the Declaration, each owner shall reimburse the Association for any expenditures incurred in repairing or replacing any portion of the Common Area owned by the Association, which are damaged through the fault of such Owner. Such expenditures shall include all court costs and reasonable attorney's fees incurred in enforcing any provision of these Bylaws or the Declaration.

ARTICLE VIII

AMENDMENT TO BYLAWS

These Bylaws, the Articles of Incorporation and the Declaration, may be amended by the Association in a duly constituted meeting of the Members for such purpose. No amendment to these Bylaws shall take effect unless approved by at least a majority of a quorum of Members present, in person or by proxy, at a duly constituted regular or special meeting of the Members; provided, however, that these Bylaws may be amended by a majority of the entire Board of Trustees at any time prior to the sale of the first Lot to a purchaser from Declarant.

ARTICLE IX

MORTGAGES

9.1 **Notice to the Association.** An Owner who mortgages his Lot shall notify the Association, through the Manager or the Secretary of the Board of Trustees in the event there is no Manager, of the name and address of his mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Lots." Any such Owner shall likewise notify the Association as to the release or discharge of any such mortgage.

9.2 **Notice of Unpaid Assessments.** The Board of Trustees of the Association shall, at the request of a mortgagee of a Lot, report any unpaid assessments due from the Owner of such Lot, in accordance with the provisions of the Declaration.

ARTICLE X

MEANING OF TERMS

All terms appearing herein initially capitalized shall have the same meanings as are applied to such terms in the Declaration, which terms include, without limitation, "Declarant", "the Properties", "Common Area", "Manager", "Owner", "Board of Trustees", "Architectural Committee", "Subdivision", "Improvement", "Lot", "Articles of Incorporation", "Member", "Mortgage", "Mortgagee", "Assessments", "Special Assessments", "Capital Improvement Assessments" and "Reconstruction Assessments".

ARTICLE XI

CONFLICTING PROVISIONS

In case any of these Bylaws conflict with any provision of the laws of the State of Utah, such conflicting Bylaw shall be null and void upon final court determination to such effect, but all other Bylaws shall remain in full force and effect. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XII

LIMITATION OF LIABILITY & INDEMNIFICATION OF DIRECTORS AND OFFICERS

12.1 **Limitation of Liability of Directors; Indemnification.** To the fullest extent permitted by the Act, or as it may hereafter be amended or enacted, or any other applicable law now in effect or which may hereinafter be enacted, a Director of this Corporation shall not be personally liable to the Corporation or its shareholders or Members for monetary damages for any action taken or any failure to take any action, as a Director.

Notwithstanding the foregoing, this limitation on the liability of Directors does not eliminate or limit the liability of a Director for: (a) the amount of a financial benefit received by a Director to which the Director is not entitled; (b) an intentional infliction of harm on this corporation or its members; (c) an intentional violation of criminal law; or (d) or for unlawful distributions.

12.2 **Indemnification.** To the fullest extent permitted by the Act, the Corporation shall indemnify any Director, officer or committee member made a party to a proceeding because

he is or was a Director or officer of the Corporation. If appropriate determination is made by the Board, the Corporation shall pay for or reimburse the reasonable expenses, including attorneys' fees and costs of suit, incurred by a Director or officer who is a party to a proceeding because he is or was a Director or officer of the Corporation.

Without limiting the generality or breadth of the foregoing, except to the extent that such liability or damage or injury is covered by insurance proceeds, consistent with the Act, the Board of Directors may authorize the Association to pay expenses (including legal fees) incurred by, or to satisfy a judgment or fine rendered or levied against, a present or former Director, officer or committee member of the Association in an action brought by a third party against such person, whether or not the Association is joined as a party defendant, to impose a liability or penalty on such person for the act alleged to have been committed by such person while a Director, officer or committee member; provided, however, the Board of Directors determines, in good faith, that such Director, officer or committee member was acting in good faith within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interests of the Association or its Members. Payments authorized hereunder include amounts paid and expenses incurred in defending and in settling any such action or threatened action. The provisions of this section shall apply to the estate, executor, administrator, heirs, legatees or devisees of a Director, officer or committee member and the term "person" where used in the foregoing section, shall include the estate, executor, administrator, heirs and legatees or devisees of such person.

Neither any amendment nor repeal of this Section or the adoption of any provision in these Bylaws inconsistent with this Article XII shall eliminate or reduce the effect of this Article XII with respect to any matter occurring, or any cause of action, suit or claim that accrued or arose, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE XIII

MISCELLANEOUS

13.1 **Execution of Documents.** The Board of Trustees, except as in these Bylaws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association and such authority may be general or confined to specific instances; and unless so authorized by the Board of Trustees, no officer, agent, committee member or employee shall have any power or authority to bind the Association by any contract or engagement or pledge its credit or to render it liable for any purpose or in any amount.

13.2 **Inspection of Bylaws.** The Association shall keep, in its office for the transaction of business, the original or a copy of these Bylaws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Owners and all first mortgagees at all reasonable times during business hours.

13.3 **Fiscal Year.** The fiscal year of the Association shall be determined by the Board of Trustees and having been so determined, is subject to change from time to time as the Board of Trustees shall determine.

13.4 **Membership Book.** The Association shall keep and maintain, in its office for the transaction of business, a book containing the name and address of each Member. Termination or transfer or ownership of any Lot and certificate of membership by an Owner shall be recorded in the book, together with the date on which such ownership was transferred, in accordance with the provisions of the Declaration.

ARTICLE XIV

NOTICE AND HEARING PROCEDURE

14.1 **Suspension of Privileges.** In the event of an alleged violation of the Declaration, these Bylaws or the Rules and Regulations of the Properties adopted hereunder, and after written notice of such alleged violation is given to the Owner or to anyone in his family alleged to be in default in the manner herein provided, the Board of Trustees shall have the right, after the alleged violator has been given an opportunity for an appropriate hearing as hereinafter provided, and upon an affirmative vote of a majority of all members of the Board of Trustees, to suspend or condition said Owner and his family's right to use of the Common Area facilities. Any such suspension shall be for a period of not more than thirty (30 days) for any non-continuing infraction, but in the case of a continuing infraction (including non-payment of any assessment after the same has become delinquent), suspension may be imposed for so long as the violation continues. The failure of the Board of Trustees to enforce the Rules and Regulations of the Properties, these Bylaws or the Declaration, shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Bylaws or by law shall be cumulative and none shall be exclusive. However, any individual Member must exhaust all available internal remedies of the Association prescribed by these Bylaws, or by the Rules and Regulations adopted by the Association, before the Owner may resort to a court of law for relief with provision of the Declaration, these Bylaws or the Rules and Regulations. The foregoing limitation pertaining to exhausting administrative remedies shall not necessarily apply to the Board of Trustees or to any Member where the complaint alleges non-payment of Assessments, Capital Improvement Assessments or Reconstructive Assessments.

14.2 **Written Complaint.** Upon the filing of a complaint, the President shall serve a copy thereof on the Respondent by any of the following means: Service shall be by: (a) given personally; (b) sent by registered or certified mail, return receipt requested and addressed to the Respondent at the address appearing on the books of the Association; or (c) posted on the Lot and in a conspicuous place on the Common Area and in the office of the Association. Service by mailing or posting shall be deemed delivered and effective two (2) days after such posting and mailing in a regular depository of the United States mail. The complaint shall be accompanied with a postcard or other written form entitled "Notice of Defense" which, when signed by the

Respondent or on behalf of the Respondent, will constitute a notice of defense hereunder. The copy of the complaint shall be accompanied by: (a) a statement that the Respondent may request a hearing before a Tribunal, in a form substantially as provided in Article XIV, Section 4; and (b) a copy of Article XIV of these Bylaws. No order adversely affecting the rights of the Respondent shall be made in any case, unless the Respondent shall have been served as provided herein.

14.3 **Statement to Respondent.** The statement accompanying the complaint to the Respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as Respondent in the accompanying complaint is delivered or mailed to the Board of Trustees within fifteen (15) days after the complaint was served upon you, the Board of Trustees may proceed upon the complaint without a hearing and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled "Notice of Defense" to the Board of Trustees at the following address: 2843 South 450 West, Bountiful, Utah 84010. You may, but need not, be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writing or item on file in connection with this matter in the possession, custody or control of the Board of Trustees, you may contact the Chairman of the Board of Trustees.

14.4 **Notice of Defense.** The Notice of Defense shall state that the Respondent may:

- (a) Request a hearing before a Tribunal as hereinafter provided;
- (b) Object to a complaint upon the grounds that it does not state acts or omissions upon which the Board of Trustees may proceed;
- (c) Object to the form of the complaint on the grounds that it is so indefinite or uncertain that the Respondent cannot identify the violating behavior or prepare his defense; or
- (d) Admit to the complaint in whole or in part.

The Respondent shall be entitled to a hearing on the merits of the matter if the Notice of Defense is timely filed with the Board of Trustees. The Respondent may file a separate statement by way of mitigation, even if he does not file a Notice of Defense. Any objection to the form or substance of the complaint shall be considered by the Tribunal within ten (10) day period. If the complaint is insufficient, the complaining party shall have seven (7) days within which to amend the complaint to make it sufficient. The same procedure as set forth above shall be followed with respect to any amended or supplemental complaint. If it is determined by the Tribunal that the complaint is still insufficient, then the matter shall be dismissed by the Tribunal.

14.5 **Amended or Supplemental Complaint before Submission to Tribunal.** At any time before the matter is submitted to the Tribunal for its findings of fact and recommendations,

the Board of Trustees may file or permit the filing of an amended or supplemental complaint. All parties shall be notified thereof in the manner herein provided. If the amended or supplemental complaint presents new charges, the Board of Trustees shall afford the Respondent a reasonable opportunity to prepare his defense thereto. All new charges shall be deemed controverted and any objection to the amended or supplemental complaint may be made orally and shall be noted in the record of proceedings.

14.6 **Discovery**. After initiation of a proceeding in which the Respondent is entitled to a hearing on the merits, the Respondent and the individual filing the complaint or supplemental complaint, upon written request made to the other party, prior to the hearing and within fifteen (15) days after service by the Board of Trustees of the complaint or within ten (10) days after service of any amended or supplemental complaint, is entitled to: (1) obtain the names and addresses of witnesses to the extent known to the other party; and (2) inspect and make a copy of any statements, writings and/or investigative reports relevant to the subject matter of the hearing. Nothing in this section, however, shall authorize the inspection or disclosure by law or otherwise made confidential or protected as the attorney's work product. Any party claiming his request for discovery has not been complied with shall submit a petition to compel discovery with the Tribunal appointed by the President. The Tribunal shall make a determination and issue a written order setting forth the matters or parts thereof which the petitioner is entitled to discover.

14.7 **Tribunal**. The President shall appoint a Tribunal of three (3) Owners upon receipt of a written complaint as provided in Section 2 of this Article. No member of the Tribunal shall be a trustee of the Association nor shall any member of the Tribunal be involved in any prior investigation of the matter on behalf of the Board of Trustees nor related by blood or marriage to either the complaining party or the Respondent. In appointing the members of the Tribunal, the President should make a good faith effort to avoid appointing next door neighbors of the violation giving rise to the complaint. The decision of the President shall be final, except that the Respondent may challenge any member of the Tribunal for cause, where a fair and impartial hearing cannot be afforded, at any time prior to the taking of evidence at the hearing. In the event of such a challenge, the Board of Trustees shall meet to determine the sufficiency of the challenge, without the President voting. If such challenge is sustained, the President shall appoint another Owner to replace the challenged member of the Tribunal. All decisions of the Board of Trustees shall be legally trained, and appoint a recorder to present evidence and to ensure that a proper record of all proceedings is maintained by the qualified reporter. The chairman shall preside at the meeting but the hearing officer shall rule on the admission and exclusion of evidence and shall advise the agency on matters of law. The Tribunal shall exercise all other powers relating to the conduct of the hearing.

14.8 **Notice of Hearing**. The Tribunal shall serve a Notice of Hearing, as provided herein, on all parties at least ten (10) days prior to the hearing, if such hearing is requested by the Respondent. The hearing shall be held no sooner than thirty (30) days after the service of the complaint as provided in Section 3 of this Article XIV. The notice to the Respondent shall be substantially in the following form but may include other information:

"You are hereby notified that a hearing will be held before a Tribunal appointed by the President of the Association at _____, on the _____ day of _____, 19____, at the hour of _____, upon the charges made in the complaint served upon you. You may be present at the hearing; may but need not be represented by counsel; may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to compel the attendance of witnesses and the production of books, documents or other items by applying to the Board of Trustees of the Association."

14.9 Depositions and Written Interrogatories. On verified petition of any party, the Board of Trustees, upon recommendation by the Tribunal, may order that the testimony of any material witness residing within the Properties be taken by depositions in the manner prescribed by law for depositions and written interrogatories in civil actions. The petition shall set forth the nature of the pending proceeding, the name and address of the witness whose testimony is desired, a showing of the materiality of his testimony, a showing that the witness will be unable to attend and shall request an order requiring the witness to appear and testify before the Secretary of the Association.

14.10 Affidavits.

(a) At any time ten (10) days, or more prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subsection (b). Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant his right to cross-examine such affiant is waived and the Affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefore is made as herein provided, the affidavit may be introduced in evidence but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subsection (a) above shall be substantially the form as follows:

"The accompanying Affidavit of _____ will be introduced as evidence at the hearing in the matter of _____ before a Tribunal of the Association. _____ will not be called to testify orally and you will not be entitled to question him/her unless you notify _____ that you wish to cross-examine him/her. To be effective, your request must be mailed or delivered to _____ on or before _____, 19____.

14.11 Hearing.

(a) Whenever the Tribunal has commenced to hear the matter and a member of the Tribunal is withdrawn prior to a final determination by the Tribunal, the remaining members shall continue to hear the case and the hearing officer shall replace the withdrawing member. Oral evidence will be taken only on oath or affirmation administered by an officer of the Association. The use of affidavits and written interrogatories in lieu of oral testimony shall be encouraged by the Tribunal.

(b) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil matters. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing and irrelevant and unduly repetitious evidence shall be excluded.

(c) Each party shall have these rights: (1) to call and examine witnesses; (2) to introduce exhibits; (3) to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination; (4) to impeach and to rebut the evidence against him. If Respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(d) Neither the accusing Owner nor the allegedly defaulting Owner must be in attendance at the hearing. The hearing shall be open to attendance by all Owners. In rendering a decision, office notice may be taken at any time of any generally accepted matter within the Declaration, these Bylaws, the Rules and Regulations of the Properties, or the workings of the Association. Parties present at the hearing shall be informed of the matters to be noticed by the tribunal and these matters shall be made a part of the record of proceedings. The Tribunal may grant continuances on a showing of good cause.

14.12 Decisions. The hearing officer, who was in attendance at the hearing, if any, shall assist and advise the Tribunal in making its decision. If the Respondent fails to file a Notice of Defense as provided in Section 5 of Article XIV, or fails to appear at a hearing, the Tribunal may take action based on the evidence presented to it without notice to the Respondent. However, the Respondent may make any showing by way of mitigation. The Tribunal shall make its determination, only in accordance with the evidence presented to it and in accordance with these Bylaws. After all testimony and documentary evidence has been presented to the Tribunal committee, the Tribunal committee controlling. A copy of the findings and recommendations of the Tribunal shall be posted by the Board of Trustees at a conspicuous place on the Common Area and a copy shall be served by the President on each party in the matter and his attorney, if any. Disciplinary action under the Declaration, these Bylaws or the Rules and Regulations of the Properties shall be imposed only by the Board of Trustees and in accordance with the findings and recommendations of the Tribunal in their entirety, or the Board of Trustees may reduce the proposed penalty and adopt the balance of the recommendations. In no event shall the Board of

Trustees impose more stringent disciplinary action than recommended by the Tribunal. The decision of the Board of Trustees shall be in writing and shall be served and posted in the same manner as the findings and recommendations of the Tribunal. The decision of the Board of Trustees shall become effective ten (10) days after it is served upon the Respondent, unless otherwise ordered in writing by the Board of Trustees. The Board of Trustees may order reconsideration, at any time within fifteen (15) days following service of its decision on the parties, on its own motion or on petition by any party.

ARTICLE XV

MEMBERSHIP IN THE ASSOCIATION

15.1 **Membership.** Every Owner of a Lot shall be a member of the Association and no Owner shall have more than one membership in the Association. Membership in the Association shall not be assignable, except to the successor in interest of the Owner (including a Mortgagee) and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot. Ownership of such Lot shall be the sole qualification for membership in the Association.

There shall be as many Members as there are Owners of Lots in the Properties.

15.2 **Transfer.** The Association Membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or mortgagee of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board of Trustees before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee title to the Lot sold is transferred. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of such Lot upon transfer of fee title hereto, the Board of Trustees shall have the right to record the transfer upon the books of the Association. The Board of Trustees shall have the right to charge a reasonable Special Assessment against any Owner and his Lot equal to the cost of the Association of effectuating any such transfer of his membership upon the books of the Association.

Adopted: November 15, 2008

Ent 343163 Bk 0979 Pg 1436-1465
 ELIZABETH M PALMIER, Recorder
 WASATCH COUNTY CORPORATION
 2008 DEC 29 10:51am Fee 163.00 JP
 FOR FIRST AMERICAN - HEBER CITY
 ELECTRONICALLY RECORDED

**FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS OF STRAWBERRY LAKEVIEW
 DEVELOPMENT**

THIS FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("DECLARATION") is made and executed this 24th day of November, 2008 by the Board of Directors of Strawberry Lakeview Owners' Association, Inc., which was formed for administering the affairs of the Strawberry Lakeview, LLC development which is reflected by the recorded plat of Strawberry Lakeview, LLC recorded August 13, ~~1979~~¹⁹⁹⁷ as Entry Number 196328 in Book 356 at Pages 139-198 in the Official Records of the Wasatch County Recorder. This First Amended and Restated Declaration of Covenants, Conditions and Restrictions was as approved by a majority of the Members/Lot Owners at a meeting thereof held November 15, 2008 at 10:00 a.m., and has been approved by the Board of Directors of Strawberry Lakeview Owners' Association, Inc.

RECITALS:

A. Declarant is the record Owner of that certain tract of real property located in Wasatch County, Utah near Strawberry Reservoir more particularly described as follows (the "Property"), to-wit:

See Exhibit "A" Attached Hereto and
 Incorporated Herein by Reference

B. Declarant desires to create on the Property a recreational development. It is anticipated that the development, in part will adjoin United States Forest Service Property thereby providing open space. The development is to consist of 95 recreational lots including roads (the "Development").

C. Declarant desires to provide for preservation of the values, for the maintenance of the improvements and Common Areas and preservation of any protection zones within or in proximity to this Development. To this end and for the benefit of the Property and the Owners thereof, Declarant desires to subject the Property and each Lot therein to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

D. For the efficient preservation of the values and improvements in this Development, Strawberry Lakeview Homeowners Association, a Utah non-profit corporation, has been formed which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and enforce the provisions of this Declaration.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby declares that all of the Property described above together with each Lot therein shall be held, occupied, sold, transferred and conveyed subject to the following covenants, conditions, restrictions, easements, and