



RESTATED DECLARATION
OF
COVENANTS,
CONDITIONS AND RESTRICTIONS
AND
RESERVATION OF EASEMENTS
FOR
HERITAGE ESTATES

A CLUSTER HOUSING DEVELOPMENT SUBDIVISION

January 2018

Table of Contents

I.	DEFINITIONS	2
II.	OWNER'S PROPERTY RIGHTS	7
III.	MEMBERSHIP IN THE ASSOCIATION	9
IV.	VOTING RIGHTS	10
V.	DUTIES AND POWERS OF THE ASSOCIATION.....	10
VI.	COVENANTS FOR MAINTENANCE ASSESSMENTS.....	11
VII.	EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.	15
VIII.	ARCHITECTURAL CONTROL	16
IX.	MAINTENANCE AND REPAIR OBLIGATIONS	19
X.	USE RESTRICTIONS	20
XI.	FENCES.....	23
XII.	SOLAR PANELS/ ROOF ATTACHMENTS	23
XIII.	DAMAGES OR DESTRUCTION TO COMMON AREA	25
XIV.	INSURANCE.....	26
XV.	MORTGAGE PROTECTION CLAUSE.....	28
XVI.	PARTYWALLS	30
XVII.	LEASING RESTRICTIONS	30
XVIII.	GENERAL PROVISIONS	32
	Exhibit A.....	Legal Description
	Exhibit B.....	Maintenance Chart
	Exhibit C	Bylaws
	Exhibit D	Grandfathered Rental Lots

**RESTATED DECLARATION OF COVENANTS,
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THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR HERITAGE ESTATES, A CLUSTER HOUSING DEVELOPMENT SUBDIVISION ("Restated Declaration"), is made this _ day of January 2018, by a vote of the Lot Owners within the Heritage Estates Subdivision ("Heritage Estates"), which Lot Owners are also members of the Heritage Estates Owners' Association ("Association").

RECITALS

WHEREAS, by this Restated Declaration the Lot Owners intend to continue the common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of Heritage Estates and the Association in accordance with the terms hereof.

WHEREAS, the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Heritage Estates, a Cluster Housing Development Subdivision ("1995 Declaration"), was recorded in the office of the Box Elder County Recorder on May 11, 1995, as entry number 076649; and

WHEREAS, the 1995 Declaration was restated and replaced by the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements of Heritage Estates, a Cluster Housing Development Subdivision, ("1998 Declaration"), which was recorded in the office of the Box Elder County Recorder on June 10, 1998, as entry number 112628; and

WHEREAS, the property that is subject to this Amendment is situated in and upon certain real property located in Box Elder County, State of Utah, as specifically described in Exhibit "A", attached hereto and incorporated herein by this reference; and

WHEREAS, the purpose and intent of this Restated Declaration is to restate, replace, and amend the 1995 Declaration and the 1998 Declaration, any amendments thereto, and all prior recorded declarations, amendments and bylaws, which shall collectively be referred to herein as the "Governing Documents," and to subject all Lots and Lot Owners within Heritage Estates to one set of covenants, conditions, and restrictions as set forth in the Restated Declaration.

NOW, THEREFORE, to accomplish the Owners' objectives, this Restated Declaration is hereby adopted. The Governing Documents are hereby restated, replaced and amended by this Restated Declaration. It is the intent of the Owners that this Restated Declaration replace all

prior Governing Documents and that this Restated Declaration be the sole set of restrictive covenants governing Heritage Estates. Regardless of any language herein to the contrary, the following are not renounced, rescinded, revoked, replaced or amended: the Plat Maps (as defined herein); the submission and dedication of the real property described in Exhibit "A" to the provisions of this Restated Declaration; the ratification, approval and incorporation of the Heritage Estates Owners' Association, a Utah nonprofit corporation, and the Articles of Incorporation on file with the State of Utah; and, any other provision, paragraph, or section that is required to maintain the legal status of the Project which, if repealed, would nullify or impair the legal status of the Project.

It is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Restated Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Association and all Lot Owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

The statements set forth in the above recitals are hereby approved and accepted as being accurate and shall constitute part of this Restated Declaration.

ARTICLE I DEFINITIONS

Unless otherwise expressly provided, the following words and phrases, when used herein, shall have the meaning hereinafter specified:

- I.OJ **"Architectural Committee"** shall mean the committee created pursuant to Article VIII hereof.
- 1.02 **"Articles"** shall mean the Articles of Incorporation of the Association which have been filed in the office of the Utah Department of Commerce, Division of Corporations, and as such Articles may be amended, from time to time.
- 1.03 **"Assessment"** shall mean the charge against a particular Owner and his/her Lot, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Properties.
- 1.04 **"Association"** shall mean Heritage Estates Homeowners' Association, a corporation formed under the Utah Nonprofit Corporation and Cooperative Association Act, its successors and assigns.
- 1.05 **"Beneficiary"** shall mean mortgagee under a mortgage or a beneficiary or holder under a Deed of Trust, as the case may be and the assignees of such mortgagee, beneficiary or holder.

- 1.06 **"Board of Directors" or "Board"** shall mean the Board of Directors of the Association, elected in accordance with the Bylaws of the Association.
- 1.07 **"Bylaws"** shall mean the Bylaws of the Association which have been or shall be adopted by the Members of the Association, and as such Bylaws may be amended, from time to time. The Association's Bylaws are attached hereto as Exhibit C and are adopted as the Bylaws of the Association.
- 1.08 **"Capital Improvement Assessment"** shall mean a charge against each Owner and his/her Lot representing a portion of the costs to the Association for installation or construction of any improvements on any portion of the Common Area which the Association may, from time to time, authorize.
- 1.09 **"Common Area"** shall mean all the real property and improvements, including without limitation, any landscaped areas, walkways, water and water rights under Weber - Box Elder Conservation District, a political subdivision of the State of Utah and an irrigation water distribution system, and sanitary storm sewer facilities, fences and easements and rights-of-way appurtenant to the Properties which are owned by the Association for the common use and enjoyment of the Owners of Lots. Provided, however, the driveways and adjacent walkways are Limited Common Areas, the use of which is reserved to the owners of the individual Lots to which they are contiguous. The Common Area to be so owned by the Association at the time of the conveyance of the first Lot shall also include the following described property located in the County of Box Elder, State of Utah:

PHASE I:

A part of the Southeast Quarter of Section 35, Township 9 North, Range 2 West of the Salt Lake Base and Meridian described as: Beginning at a point located South 88 degrees 23'32" West along the South line of said Section as currently monumented 1146.92 feet and North 00 degrees 00'00" West 200.66 feet from the Southeast corner of said Southeast Quarter being a brass cap monument, said point of beginning being on the North line of the Freda P. Oylar et al., Tax No. 03-158-0026 property, also being grantors South property line; and running thence South 89 degrees 37'01" West 329.77 feet to Grantors Southwest property corner; thence North 00 degrees 34'14" West 195.03 feet along grantors West property line and the East line of Heritage Subdivision, the following six (6) courses: North 05 degrees 54'21" East 120.66 feet; thence to the left of a 180.00 foot radius curve a distance of 32.05 feet, chord bears South 86 degrees 54'44" East 32.01 feet; thence North 02 degrees 00'49" West 60.00 feet; thence North 87 degrees 59'11" East 113.33 feet; thence North 02 degrees 08'28" West 100.00 feet to grantors North property line; thence North 87 degrees 59'11" East along said property line 140.00 feet; thence South 02 degrees 00'49" East 100.00 feet; thence South 02 degrees 55'21" East 60.01 feet; thence South 00 degrees 00'00" East 178.78 feet; thence South 33 degrees 45'42" East 60.14 feet; thence South 00 degrees 00'00" East 91.26 feet to the point of beginning.

PHASE II:

A part of the Southeast Quarter of Section 35, Township 9 North, Range 2 West of the Salt Lake Base and Meridian described as: Beginning at a point located South 88 degrees 23'32" West along the South line of said Section as currently monumented 1146.92 feet and North 00 degrees 00'00" West 200.66 feet from the Southeast corner of said Southeast Quarter being a brass cap monument same as Phase I and running thence along the East boundary line of Phase I the following five (5) courses: North 00 degrees 00'00" East 91.26 feet; thence North 33 degrees 45'42" West 60.14 feet; thence North 00 degrees 00'00" East 178.78 feet; thence North 02 degrees 55'21" West 60.01 feet; thence North 02 degrees 00'49" West 100.00 feet to grantors North property line; thence North 87 degrees 59'11" East along said grantors North property line 303.27 feet; thence South 02 degrees 08'28" West 102.12 feet; thence South 32 degrees 15'55" West 70.76 feet; thence South 00 degrees 00'00" West 187.42 feet; thence South 22 degrees 41'09" East 54.19 feet; thence South 00 degrees 00'00" West 134.04 feet to grantors South property line; thence North 89 degrees 59'58" West 244.55 feet along said line to the East line of the Freda P. Oyler property, Tax No. 03-158-0026; thence along the East and North lines of said property North 00 degrees 00'00" East 42.82 feet; thence North 89 degrees 37'01" East 5.47 feet to the point of beginning.

PHASE III:

A part of the Southeast Quarter of Section 35, Township 9 North, Range 2 West of the Salt Lake Base and Meridian described as: Beginning at the Southeast corner of Heritage Estates Phase II being located South 88 degrees 23'32" West along the South line of said Section as currently monumented 896.80 feet; and North 00 degrees 00'00" East 150.86 feet from the Southeast Corner of said Southeast Quarter, being a brass cap monument same as Phase II; and running thence along the East boundary line of Phase II the following five (5) courses: (1) North 00 degrees 00'00" East 134.04 feet; (2) North 22 degrees 41'09" West 54.19 feet; (3) North 00 degrees 00'00" East 187.42 feet; (4) North 32 degrees 11'27" East 70.90 feet; (5) North 02 degrees 08'28" West 101.95 feet to Grantors North property line; thence North 87 degrees 59'11" East along said Grantors North property line 265.66 feet; thence South 11 degrees 36'12" East 198.74 feet; thence South 02 degrees 00'00" East 348.22 feet to Grantors South property line; thence North 89 degrees 59'58" West 330.68 to the point of beginning.

Excluding, however, Lots I through 16 and 18 through 41, inclusive, HERITAGE ESTATES, a Cluster Housing Development Subdivision, together with a perpetual easement for encroachment of the farthest roof projection of the buildings. Provided, however, the exclusive use of the driveways and adjacent walkways is reserved for the Lot to which the same are appurtenant, and also excluding the public roads, curbing and sidewalks. Lots 17, 42 and 43 are not part of the project and not subject to the Declaration as amended by supplements to declaration dated May 6 and 7th of 1996.

I.IO "**Common Expenses**" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area (including unpaid

special assessments, reconstruction assessments and capital improvement assessments), including those costs not paid by the Owner responsible for payment, costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to manager, accountants, attorneys and other employees, the costs of all utilities, gardening and other services benefitting the Common Area and all recreational facilities thereon; the costs of fire, casualty and liability insurance, workmen's compensation insurance and other insurance covering the Properties and the costs of bonding of the members of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties or portions thereof; and the costs of any other item or items designated by or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners of Lots.

- 1.11 **"Deed of Trust"** shall mean and refer to a mortgage or a Deed of Trust, as the case may be.
- 1.12 **"Dwelling Unit"** shall mean and refer to a building located on a Lot designed and intended for the use and occupancy as a residence by a single family.
- 1.13 **"Family" or "Single Family"** shall mean: (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of not more than three persons not all so related, inclusive of their domestic servants, who maintain a common household in a residence on a Lot.
- 1.14 **"Improvement"** shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, out buildings, walk-ways, sprinkler pipes, carports, roads, driveways, fences, screening walls, retaining walls, window wells, stairs, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, yard light poles, lawn curbing, and signs.
- 1.15 **"Limited Common Area"** shall mean those portions of the Common Area reserved for the exclusive use of the Lot Owners appurtenant to each Lot Owner's Lot. The Limited Common Area includes the driveway directly in front of each Owner's Dwelling Unit and that portion of the walkway leading from the front door of the Dwelling Unit to the driveway, to the extent the walkway is not located directly on the Lot Owner's Lot.
- 1.16 **"Lot"** shall mean and refer to any residential Lot or parcel of land shown upon any recorded subdivision plat of HERITAGE ESTATES, with the exception of the Common Area.
- 1.17 **"Maintenance Funds"** shall mean the accounts created for the receipts and disbursements of the Association pursuant to Article VI hereof.
- 1.18 **"Member"** shall mean any person or entity holding a membership in the Association as provided herein.

- 1.19 **"Mortgage", "Mortgagee"** shall mean any mortgage or Deed of Trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein, shall be synonymous with the term "Mortgage". The term "Mortgagee" shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a Deed of Trust; "Mortgagor" shall mean a person or entity who mortgages his/her or its property to another (i.e., the maker of a mortgage) and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgagee".
- 1.20 **"Notice and Hearing"** shall mean written notice and a public hearing before a Tribunal appointed by the Board of Directors at which the Owner concerned shall have opportunity to be heard in person or by counsel at Owner's expense, in the manner further provided in the Bylaws.
- 1.21 **"Owner"** shall mean and refer to the person or persons or other legal entity or entities, holding fee simple interest of record to any Lot which is part of the Properties, including sellers under executory contract of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article X only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and lessees of any Owner.
- 1.22 **"Person"** shall mean a natural individual to any other entity with the legal right to hold title to real property.
- 1.23 **"Properties"** shall mean and refer to all of the real property described in section eleven of this Article.
- 1.24 **"Reconstructive Assessment"** shall mean a charge against each Owner and his/her Lot representing a portion or portions of the improvements on the Common Area pursuant to the provisions of this Declaration.
- 1.25 **"Record, Recorded, Filed and Recordation"** shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of the County of Box Elder, State of Utah.
- 1.26 **"Restated Declaration"** shall mean and refer to this instrument as it may be amended from time to time.
- 1.27 **"Special Assessments"** shall mean a charge against a particular Owner and his/her Lot, directly attributable to the Owner for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

- 1.28 **"Subdivision"** shall mean a parcel of real property which has been divided or separated into Lots, shown on a recorded subdivision map, and amended plats.

**ARTICLE II
OWNER'S PROPERTY RIGHTS**

- 2.01 **Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area which shall be appurtenant to and shall pass with title to every Lot and unit, subject to the following provisions:
- (a) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities.
 - (b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereof, including but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Area as set forth in Section 3 of Article II herein.
 - (c) The right of the Association to charge uniform and reasonable admission and other fees for the use of the recreational facilities, if any, situated upon a portion of the Common Area; provided, however, that none of the Common Area facilities, recreational facilities, parking spaces or other amenities in the Properties shall be leased to the Owners.
 - (d) The right of the Association, in accordance with its Articles of Incorporation, Bylaws, and this Declaration, with the vote of or written assent of a majority of members, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, and subject to the provisions of Article XIV of this Declaration, to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the rights of the Owners.
 - (e) The right of the Association to suspend the voting rights and right to use the Common Area facilities by an owner for any period during which any assessment against his/her Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or right to use the Common Area facilities shall be made only by the Board of Directors of the Association, after notice and an opportunity for a hearing as provided in the Bylaws of the Association.
 - (f) With the consent of the City of Perry and subject to the provisions of Article XIV of this Declaration, the Association shall have the right to dedicate, release, alienate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the

Members. No such dedication, release, alienation or transfer shall be effective unless an instrument signed by Members entitled to cast a majority of the voting power of the Class A Members, agreeing to such dedication, release, alienation, or transfer has been recorded.

- (g) The right of the Association (by action of the Board of Directors) to reconstruct, replace or refinish any improvement or portion thereof upon the Common Area, in accordance with the original design, finish or standard of construction of such improvements, or of the general improvements within the Properties, as the case may be; and not in accordance with such original design, finish or standard of construction only with the vote or written consent of the Owners holding a majority of the voting power of the Association.
- (h) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and groundcover upon any portion of the Common Area.

2.02 **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his/her right of enjoyment to the Common Area and facilities to the members of his/her family, his/her tenants or contract purchasers who reside in his/her dwelling unit, subject to reasonable regulation by the Board of Directors.

2.03 **Parking and Vehicular Restrictions.** No Owner of any Lot shall park, store or keep any vehicle except wholly within the parking area designated therefore and any inoperable vehicle shall be stored only in garages. No Owner shall park, store or keep on any property any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle) upon any driveway. The above excludes small pickups up to 3/4 ton when used for everyday transportation. No Owner of a Lot shall conduct major repairs or major restoration of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or upon the Limited Common Area nor permit any unregistered or inoperable vehicle to be parked on any Lot or Limited Common Area for more than seventy-two (72) hours in any 30-day period. Provided, however, recreational vehicles may be temporarily parked, from time to time, for periods not to exceed seventy-two (72) hours for purposes of loading, unloading and cleaning.

2.04 **Easements for Parking.** The Association, through its officers, committees and agents, and any owner, is hereby empowered to enforce these parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those so empowered.

2.05 **Easements for City and County Use.** In addition to the foregoing easements over the Common Area, there shall be easements for city, county, state and federal public services, including but not limited to, the right of the police to enter upon any part of the Common Area for the purpose of enforcing the laws and permanent easement in favor of Perry City pursuant to the ordinances of the city of Perry to guarantee that the open spaces remain perpetually in the uses for which intended.

- 2.06 **Waiver of Use.** No Owner may exempt himself/herself from personal liability for assessments duly levied by the Association nor release the Lot or other property owned by him/her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon, or by abandonment of his/her Lot or any other property in the Properties.
- 2.07 **Taxes.** Each Owner shall execute such instruments and take such action as may be reasonably specified by the Association to obtain separate real estate tax assessments on each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership or any part thereof, they may be paid by the Association and each owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against his/her own Lot and interest, if any, in the Common Area.
- 2.08 **Real Property Taxes.** The payment of real property taxes assessed against the Common Area is the responsibility of the Association. Provided, however, if for any reason the same are not timely paid, the payment of the taxes shall be the responsibility of and assessed against the Owners of the Lots, on a prorate basis.

ARTICLE III MEMBERSHIP IN THE ASSOCIATION

- 3.01 **Membership.** Every Owner of a Lot shall be a member of the Association. Memberships in the Association shall not be assignable, except to the successor in interest of the Member, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot.
- 3.02 **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 reflect upon the books and records of the Association. A Member who has sold his/her Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his/her membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board of Directors before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his/her Lot until fee simple title to the Lot sold is transferred. In the event the Owner of any Lot shall fail or refuse to transfer the membership registered in his/her name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. The Board of Directors shall have the right to charge a reasonable Special Assessment against any Owner and his/her Lot, equal to the cost to the Association of effectuating any such transfer of his/her membership upon the books of the Association.

**ARTICLE IV
VOTING RIGHTS**

4.01 **Voting.** Members shall be entitled to one(!) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot ("co-owner"), all such co-owners shall be Members and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled: Such co-owners may, from time to time, designate in writing one of their number to vote. Fractional votes shall not be allowed. Where no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board of Directors receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his/her or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners' present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the Bylaws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association.

**ARTICLE V
DUTIES AND POWERS OF THE ASSOCIATION**

- 5.01 **Duties.** The Association, acting through the Board of Directors, shall also have the power and duty to:
- (a) Maintain, repair and otherwise manage the Common Area and all facilities, improvements and landscaping thereon in accordance with the provisions of Article VI of this Declaration.
 - (b) Grant easements, rights-of-way or strips of land, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.
 - (c) Maintain such policy or policies of liability and fire insurance with respect to the Common Area and personal property, if any, owned by the Association as provided herein in furthering the purposes of and protecting the interests of the Association and Members and as directed by this Declaration and the Bylaws of the Association.
 - (d) Employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association and shall have the power to delegate its powers to committees, officers and employees. Any such agreement shall be for

a term of not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days or less written notice.

- (e) After fifteen (15) days, written notice, without being liable to any Owner, enter upon any Lot for the purpose of enforcing, by peaceful means, the provisions of this Declaration or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration, all at the cost and expense of the Lot Owner, which said cost and expense shall be a lien upon said Owner's Lot.
- (f) From time to time promulgate rules and regulations which shall be binding upon the Owners of the Lots.
- (g) Do and perform any and all things as may be convenient or necessary in connection with the Properties.

ARTICLE VI COVENANTS FOR MAINTENANCE ASSESSMENTS

- 6.01 **Creation of the Lien and Personal Obligations of Assessments.** Each owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments for common expenses; (2) capital improvement assessments; (3) special assessments; and (4) reconstruction assessments; such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Subject to provisions of this Declaration protecting first mortgagees, the personal obligation for delinquent assessments shall pass to the successors in interest of such Owner. The Board of Directors shall establish no fewer than two (2) such separate accounts ("Heritage Estates Maintenance Funds") into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. Each of the Maintenance Funds shall include: (1) an Operating Fund for current expenses of the Association; and (2) a Common Area Reserve Fund for replacements, painting and repairs (which would not reasonably be expected to recur on an annual or less frequent basis) of the Common Area facilities to the extent necessary under the provisions of this Declaration. The Board of Directors shall not commingle any amounts deposited into any of the Heritage Estates Maintenance Funds with one another.
- 6.02 **Purpose of Assessments.** The assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for

the improvements and maintenance of the Common Area, Limited Common Area, exterior maintenance, drainage system, storm drain system and of the Dwelling Units situated upon the Lots in the Properties as provided herein. The Association shall be responsible for the exclusive management, control and maintenance of the sub-surface drainage system serving the Properties. The annual assessment shall include the amount sufficient to cover on-site and off-site maintenance of the sub-drain system and relocated parts thereof serving the Properties. The sub-surface drainage system assessments shall be assessed for those portions of the subsurface drainage system serving the Properties which are located in public streets or dedicated public rights-of-way (provided, however, each Lot Owner shall be solely responsible for maintenance of the sub-surface drainage facilities on or beneath said Lot Owner's Lot).

The assessments shall also be for an adequate reserve to be used as appropriate for maintenance, repairs and replacement of those elements of the common property and exterior maintenance that must be replaced on a periodic basis. However, disbursements from the Common Area Reserve Fund shall be made by the Board of Directors only for the specific purpose specified in this Article VI. Disbursements from the Operating Fund shall be made by the Board of Directors for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Common Area Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Heritage Estates Maintenance Funds by the Association, so long as the amounts deposited into any such fund are earmarked for specified purposes authorized by this Declaration.

6.03 **Damage to Common Area by Owners.** The foregoing maintenance, repairs or replacements within the Common Area arising out of or caused by the willful or negligent act of the Owner, his/her family, guests or invitees, shall be done at said Owner's expense or a Special Assessment therefor shall be made against his/her Lot; provided, however, that the liability of an individual Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the Owner is legally responsible under state law.

6.04 **Maximum Annual Assessment.**

- (a) The maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year except by a vote of a majority of members who are voting in person or by proxy at a meeting duly called for this purpose.
- (b) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

- 6.05 **Capital Improvement and Reconstruction Assessments.** In addition to the Assessments authorized above, the Board of Directors may levy, in any assessment year, a Capital improvement Assessment or Reconstruction Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement or other such addition upon the Common Area, including fixtures and personal property related thereto; provided, however that any such total assessment in excess of TWO THOUSAND (\$2,000.00) DOLLARS shall have the vote or written assent of a majority of the votes of Members who are subject to such assessment.
- 6.06 **Notice of Quorum for any Authorizing under Sections 4 and 5.** Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 4 and 5 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notification requirement and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.
- 6.07 **Uniform Rate of Assessment.** Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at a uniform rate for all Lots within the Properties; provided, however, that the Association may, subject to the provisions of Section 3 of this Article, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests or agents. All Assessments shall be collected on a regular basis by the Board of Directors, at such frequency as the Board of Directors shall determine.
- 6.08 **Date of Commencement of Assessments.** Due Date. The annual assessment shall commence six (6) months after commencement of construction of the improvements as to the property of each plat. The first annual Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board of Directors shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each Assessment period. Written notice of any change in the amount of the annual Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

The Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year,

including deposits in and withdrawals from the Common Area Reserve Fund and the Operating Fund, and shall cause to be distributed a copy of each such statement to each Member, and to each first mortgagee who has filed a written request for copies of the same with the Board of Directors, in the manner provided in the Bylaws of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the Membership of the Association, a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Common Area Reserve Fund, less any expected income and accounting for any surplus from the prior year's respective Heritage Estates Maintenance Fund).

Each annual Assessment shall constitute an aggregate of separate assessments for each of the maintenance Funds reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Common Area Reserve Fund, the Operating Fund and any other maintenance fund established by the Association. If the estimated sums prove inadequate for any reason, including nonpayment of any Owner's annual Assessment, the Board of Directors may, at any time, levy supplemental Assessments subject to provisions of Section 4 of this Article, for any of the Maintenance Funds which shall be assessed equally against the Owner of each Lot in the Properties.

Each annual Assessment may be paid by the Owner to the Association in one check or payment or in separate checks, as payments attributable to deposits into specified maintenance funds. In the event that any installment of an Assessment payment is less than the amount assessed, and the payment does not specify the maintenance fund or funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in order of priority, first to the Operating Fund, until that portion of the Assessment has been satisfied and second, to the Common Area Reserve Fund.

At the end of any fiscal year of the Association, the Owners may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Properties, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Assessments. Notwithstanding anything contained in the Articles or Bylaws to the contrary, upon dissolution of the Association, any amounts remaining in the Common Area Reserve Fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

6.09 **Exempt Property.** The following property, subject to this Declaration, shall be exempt from the assessment herein:

- (a) All properties dedicated to and accepted by a local public authority; and
- (b) The Common Area.

ARTICLE VII
EFFECT OF NON-PAYMENT OF ASSESSMENTS:
REMEDIES OF THE ASSOCIATION

- 7.01 **Effect of Non-Payment of Assessments, Remedies of The Association.** Any installment of an Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be required further by the Board of Directors to pay a late charge of FIFTEEN (\$15.00) DOLLARS or ten percent (10%) of the amount of the delinquent installment, whichever is greater. The Association may bring an action at law against the Owner, personally obligated to pay the same, or foreclose the lien against the Lot. 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/her Lot. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board of Directors shall mail an acceleration notice to the Owner and to each first mortgagee of a Lot which has requested a copy of the notice. The notice shall specify: (1) the fact that the installment is delinquent; (2) the action required to cure the default; (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Assessment for the then current fiscal year and sale of his/her Lot. The notice shall further inform the Owner of his/her right to cure after acceleration and to bring a court action to assert the nonexistence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board of Directors, at its option, may declare all of the unpaid balance payable without further demand and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law and this Declaration.
- 7.02 **Notice of Assessment.** No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a Notice of Assessment is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Properties are located; said Notice of Assessment must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment at eighteen percent (18%) per annum plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien) and the name and address of the claimant. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association and said lien shall be prior to any Declaration of Homestead recorded after the date on which this Declaration is recorded. The lien shall continue until fully paid or otherwise satisfied.

- 7.03 **Foreclosure Sale.** Any such sale provided for above may be conducted by the Board of Directors, its attorneys or other persons authorized by the Board of Directors in accordance with the provisions of the Utah Code Annotated, 1953 as amended, and specifically as set forth in the Community Association Act, U.C.A. 57-8a-101 et. seq., applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to appoint a Director and to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.
- 7.04 **Curing of Default.** Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed SEVENTY-FIVE (\$75.00) DOLLARS to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board of Directors stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed FIFTEEN (\$15.00) DOLLARS.
- 7.05 **Cumulative Remedies.** The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.
- 7.06 **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (meaning any recorded mortgage with first priority or seniority over mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or deed in lieu thereof, shall extinguish the lien of such assessments as to installments which became due prior to such sale or transfer. However, no sale or transfer shall relieve such Lot from liability for any installments of assessments thereafter becoming due or from the lien thereof.

ARTICLE VIII ARCHITECTURAL CONTROL

- 8.01 **Members of Committee.** The Architectural Committee, sometimes referred to in this Declaration as the "Committee" shall consist of the members of the Board of Directors.
- 8.02 **Review of Proposed Construction.** Subject to Article X, Section 12 of this Declaration and the Development Guide, no building, fence, wall, patio cover or other structure shall be commenced, painted, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have

been submitted to and approved in writing as to harmony of external design and color and location in relation to surrounding structures and topography by the Architectural Committee. The Committee shall approve proposals of plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole; that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The Committee may condition its approval of proposals of plans and specifications upon such changes therein as it deems appropriate, upon the agreement by the Owner submitting the same to grant appropriate easements to the Association or the cost of maintenance, or all three, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Committee may also issue rules or guide lines setting forth procedures for the submission of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee may provide that the amount of such fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated, provided that in no event shall such fee exceed FIVE HUNDRED (\$500.00) DOLLARS. The Committee may require such detail in plans and specifications submitted for its review as it deems necessary and proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior materials and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval.

- 8.03 **Meetings of the Committee.** The Committee shall meet, from time to time, as necessary to perform its duties hereunder and shall complete its review and report of proposed construction within thirty (30) days after submittal of a request. The Committee may, from time to time, by resolution, unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Sub-Section 8.08 hereof. In the absence of such designation, the vote of any two (2) members of the Committee taken without a meeting shall constitute an act of the Committee.
- 8.04 **No Waiver of Future Approvals.** The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.
- 8.05 **Compensation of Members.** The architect and landscape architect members of the Committee, if any, shall be paid for their services and necessary expenses. The other members of the Committee shall receive no compensation for services rendered, but shall

be reimbursed for expenses incurred by them in the performance of their duties hereunder.

8.06 **Inspection of Work.** Inspection of work and correcting of defects therein shall proceed as follows:

- (a) Upon the completion of any work for which approved plans are required under this Article VIII, the Owner shall give written notice of completion to the Committee.
- (b) Within sixty (60) days thereafter, the Committee, or its duly authorized representative, may inspect such improvement. If the Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner, in writing, of such non-compliance within such sixty (60) day period, specifying the particulars of non-compliance and shall require the Owner to remedy the same.
- (c) If, upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such non-compliance, the Committee, now sitting in its capacity as the Board of Directors, shall conduct a hearing. Upon notice and hearing, the Board of Directors shall determine whether there is a non-compliance and if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board of Directors ruling within such period. The Board of Directors, at its option, may either remove the non-complying improvement or remedy the non-compliance and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board of Directors shall levy a Special Assessment against such Owner for reimbursement.
- (d) If, for any reason the Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of the said written notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

8.07 **Non-Liability of Committee Members.** Neither the Committee nor any member thereof, nor its duly authorized representative, nor the members of the Board, shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing nor shall its approval of any

plans or designs be deemed approval of any plans or designs from the standpoint of structural safety or conformance with buildings or other codes.

- 8.08 **Variance.** The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Any variance authorized by the Committee must be authorized in writing and shall be recorded in the minutes of the Board meeting at which the variance is approved. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his/her use of the premises, including but not limited to, zoning ordinances and lot set back lines or requirements imposed by any governmental or municipal authority.

ARTICLE IX MAINTENANCE AND REPAIR OBLIGATIONS

- 9.01 **Maintenance of Dwelling Units.** Each Owner shall have the maintenance responsibilities regarding the Owner's Dwelling Unit as set forth in the Maintenance Chart Attached hereto as Exhibit "B." The Association shall have no obligation regarding maintenance or care of the interior of any Unit except as expressly covered by insurance or set forth in the Maintenance Chart attached as Exhibit "B".
- 9.02 **Exterior Maintenance.** The Association shall maintain the Common Areas and the exterior of Dwelling Units as set forth in the Maintenance Chart, attached hereto as Exhibit "B". Furthermore, as set forth more specifically in the attached Exhibit "B", the Association shall provide exterior maintenance upon each Lot which is subject to assessment.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

- 9.03 **Maintenance Obligation of Association,** Subject to the provisions of Section 2 of this Article, the Association shall maintain or provide for the maintenance, of all Common Areas, Limited Common Areas, and all improvements thereon, including fences, entrance gates, streets, sidewalks, Common Area landscaping, landscaping equipment and

lighting. In the event of conflict between the Maintenance Chart and the provisions of this Restated Declaration, the Maintenance Chart shall control.

- 9.04 **Damage and Destruction Affecting Residences - Duty to Rebuild.** If all of or any portion of any Lot or dwelling unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or dwelling unit to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.
- 9.05 **Variance in Exterior Appearance and Design.** Any Owner who has suffered damage may apply for approval to the Architectural Committee for reconstruction, rebuilding or repair of his/her residence in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing, together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Committee shall grant such approval only if the design proposed by the Owner should result in a finished residence as in harmony with exterior design of other residences on the Properties. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes, shall constitute approval thereof. If the obligation for repair falls upon the Association, Architectural Committee approval will not be required prior to the commencement of such work.
- 9.06 **Time Limitation,** The Owner or Owners of any damaged residence, the Association and the Architectural Committee shall be obligated to proceed with all due diligence hereunder and the responsible party shall commence reconstruction within six (6) months after the damage occurs, unless prevented by causes beyond their reasonable control.

ARTICLE X USE RESTRICTIONS

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

- 10.01 **Single Family Residence.** Subject to Section 3 of this Article X, each Lot shall be used as a residence for a single-family residence and for no other purpose.
- 10.02 **Business or Commercial Activity.** Subject to Section 3 of this Article X, no part of the Properties shall ever be used or caused to be used or allowed or authorized, in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purposes and excepting professional and administrative occupations without external evidence thereof, for so long as such occupations are in conformance with Perry City ordinances and are merely incidental to the use of the dwelling unit as a residential home.

- I 0.03 **Real Estate Business.** No dwelling unit, Lot, improvement or portion of the Common Area shall be used in the conduct of any real estate business, gainful occupation, profession, trade office or other non-residential activity.
- 10.04 **Nuisances.** No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Properties and the Board of Directors shall have the right to determine, in accordance with the Bylaws, if any noise, odor or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Owner in the Properties, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.
- 10.05 **Signs.** No sign, poster, display, billboard, or other advertising device of any kind shall be displayed to the public view on any portion of the Properties or any Lot, without the prior written consent of the Architectural Committee, except for one sign for each dwelling unit of not more than three (3) feet by two (2) feet advertising the property for sale or rent. All signs or billboards and the condition promulgated for the regulation thereof shall conform to the requirements of the Perry City Ordinances.
- 10.06 **Animals.** No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area, except usual and ordinary dogs, cats, fish, birds and other household pets may be kept on Lots, subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Association (or the Architectural Committee or such other person or entity as the Association may, from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board of Directors, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be either kept within the Dwelling Unit or on a leash being held by a person capable of controlling the animal. Should any animal belonging to an Owner be found unattended and not being held on a leash by a person capable of controlling the animal, such animal may be removed by The Association to a shelter under the jurisdiction of the local municipality in which the Properties are situated and subject to the laws and rules governing said shelter, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitee, for any unreasonable noise or damage to person or property caused by any animal brought or kept upon the Properties by an Owner or by members of

his/her family, his/her tenants or his/her guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animal which have used any portion of the Common Area.

- I 0.07 **Trash.** No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Properties, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefore and fire pits in the patios designed in such a manner that they do not create a fire hazard. No clothing or household fabrics shall be hung, dried or aired in such a way in the Properties as to be visible to other property and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Properties except within an enclosed structure or appropriately screened from view.
- 10.08 **View Obstructions.** No fence, hedge, wall or other dividing instrumentality over six (6) feet in height measured from the ground on which it stands shall be constructed or maintained on any Lot.
- 10.09 **Temporary Buildings.** No outbuilding, basement, tent, shack, shed or other temporary building or improvement of any kind shall be placed upon any portion of the Properties, either temporarily or permanently. No garage, trailer, camper, motor home or recreational vehicle shall be used as a residence in the Properties, either temporarily or permanently.
- 10.10 **Common Area Facilities.** Nothing shall be altered or constructed in or removed from the Common Area except upon written consent of the Association.
- 10.11 **Outside Installation.** No radio station or shortwave operators of any kind shall operate from any Lot or dwelling unit unless approved by the Board of Directors. Exterior radio antenna, television antenna or other antenna may be erected or maintained in the Properties, subject to the approval of the Architectural Committee.
- 10.12 **Insurance Rates.** Nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the Association without the approval of the Board of Directors nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any laws.
- 10.13 **Further Subdivision.** No Owner shall further partition or subdivide his/her Lot; provided, however, that this provision shall not be construed to limit the right of an Owner to: (1) rent or lease all or any portion of his/her Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) sell his/her Lot; or (3) transfer or sell any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by

the entirety or as community property. The terms of any such lease or rental agreement shall be subject, in all respects, to the provisions of this Declaration and Bylaws of the Association and any failure by the Lessee of such Lot to comply with the terms of this Declaration or the Bylaws of the Association shall constitute a default under the lease.

10.14 Drainage. There shall be no interference with the established drainage pattern over any subdivision within the Properties, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For purposes thereof, "established" drainage is defined as the drainage which exists at the time the overall grading of any subdivision is completed or that which is shown on any plans approved by the Architectural Committee which may include drainage from the Common Area over any Lot or Lots in the Properties.

10.15 Water Supply Systems. No individual water supply, sewage disposal system or water softener system shall be permitted on any Lot in the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Perry City Water Department, the Architectural Committee and all other applicable governmental authorities.

ARTICLE XI FENCES

I 1.01 Fences. There shall be no fences or walls (temporary or otherwise removable) within or on the Properties except the fence and/or wall around the perimeter of the Properties and except party walls, unless approved in advance by the Board in writing.

ARTICLE XII SOLAR PANELS/ROOF ATTACHMENTS

12.01 Installation Conditions. Owners of Lots within Heritage Estates may install solar panels on the roof of their Dwelling Unit only upon receiving prior written approval from the Board. Installation of solar panels must comply with the following requirements:

- (a) The installation of solar panels constitutes an exterior modification that impacts the appearance of Dwelling Units within Heritage Estates as well as maintenance costs incurred by the Association. Accordingly, plans and specifications showing the nature, kind, height, materials, color, specific location and the licensed installer of proposed solar panels must first be submitted to and approved in writing by the Architectural Committee before any solar panel installation work commences.
- (b) Solar panels may only be installed on the roof of a Dwelling Unit and may not extend beyond the roofline of the Dwelling Unit.
- (c) The installation must be as inconspicuous as possible so as to blend with the existing roof elevation. The use of low profile mounting brackets is encouraged.

- (d) Solar panels must be black in color (or, upon written approval from the Architectural Committee, must match the color or shade of the existing shingles).
- (e) The Dwelling Unit Owners must obtain all applicable permits prior to the start of any solar panel installation.
- (f) Solar panels must be installed in accordance with applicable building codes and city ordinances.
- (g) As required by Utah law (Utah Administrative Code R156-55a-301) solar panels must be installed by a Utah licensed "solar photovoltaic contractor" who is currently certified by the North American Board of Certified Energy Practitioners (NABCEP).
- (h) Solar panels must be properly maintained, repaired, and replaced at the Owner's sole expense.
- (i) If at any time a solar panel on a Dwelling Unit ceases to function, is damaged, or is broken or disfigured, the Dwelling Unit Owner shall promptly replace the solar panel or remove it from the roof, repair any damage to the roof and restore the roof to its original appearance.
- (j) The Association also recommends that any solar panels installed within the Association have a twenty-five (25) year warranty on both the product installed and the labor of the installer.

12.02 **Roof Damage.** Pursuant to Maintenance Chart (attached to this Restated Declaration as Exhibit "B"), the Association is responsible for the maintenance and repair of the roofs of Dwelling Units. However, the Association will not pay any expenses related to roof damage or repairs caused by or related to the installation, existence or removal of solar panels, satellite dishes, antennas, or any other items attached to the roof of a Dwelling Unit by the Unit Owner or for the benefit or use of the Unit Owner (such items collectively referred to herein as "Roof Attachments"). All expenses related in any manner to the existence of Roof Attachments which are incurred during or in relation to roof replacement or repair, including but not limited to electrical connections or disconnections, power outages, panel removal and safe storage, panel re-installation, roof damage, and panel damage, are the responsibility of the Owner of the Dwelling Unit upon which the Roof Attachments are located.

12.03 **Roof Restoration.** The Association shall not be responsible for any damage to a roof, the Dwelling Unit, or any other property caused by a Roof Attachments installation, existence or removal. When Roof Attachments are removed from a roof, the Owner removing the Roof Attachments will be solely responsible for all costs and expenses associated with such removal, including the costs and expenses associated with repairing any holes or other damage to the roof.

- 12.04 **Purchase of a Dwelling Unit With Solar Panels or other Roof Attachments.** When a Dwelling Unit is purchased on which Roof Attachments have been installed, the purchasing Dwelling Unit Owner is responsible for any and all costs and expenses associated with the maintenance, removal or repair of the Roof Attachments. The purchasing Dwelling Unit Owner shall also be responsible for all roof repair or restoration costs described in this Amendment. If Roof Attachments have been removed before the Dwelling Unit was purchased, the purchasing Owner shall be responsible for all costs and expenses associated with any damage caused by or resulting from the installation, existence or removal of the Roof Attachments.
- 12.05 **Definition.** As used herein the term "Solar Panel" shall mean a panel designed to absorb the sun's rays as a source of energy for generating electricity or heating.

ARTICLE XIII DAMAGES OR DESTRUCTION TO COMMON AREA

- 13.01 **Damage.** Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:
- (a) In the event of damage or destruction to the Common Area, and the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.
 - (b) If the insurance proceeds are within TEN THOUSAND (\$10,000.00) DOLLARS or less of being sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners, in accordance with the provisions of Article VI, Section 5 of this Declaration.
 - (c) If the insurance proceeds are insufficient by more than TEN THOUSAND (\$10,000.00) DOLLARS to effect total restoration to the Common Area, then by written consent or vote of a majority of the Owners, they shall determine whether:
 - (1) to rebuild and restore in substantially the same manner as the improvements existed prior to the damage and to raise the necessary funds over the insurance proceeds by levying equal Reconstruction Assessments against all Lots;
 - (2) to rebuild and restore in a way which utilizes all available -insurance proceeds and an additional amount not in excess of TEN THOUSAND (\$10,000.00) DOLLARS and which is assessable equally to all Owners but which is less expensive than replacing these improvements in substantially the same manner as they existed prior to being damaged; or
 - (3) subject to the provisions of Article XIV, to not rebuild and to distribute the available insurance proceeds equally to the Owners and mortgagees of the Lots as their respective interests may appear.

- (d) Each Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his/her family and guests, both minor and adult. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Lot and may be collected as provided herein for the collection of Assessments.

ARTICLE XIV INSURANCE

- 14.01 **Common Area.** The Association shall keep all buildings, improvements and all fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association and the owner as beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of and proceeds shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Assessments made by the Association.
- 14.02 **Insurance Obligations of the Association.** The Association shall insure each entire dwelling unit, including the structural portions of the dwelling unit, against loss or damage by fire or by any other casualty, under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by any mortgagee of the residence. All such insurance shall be for the full replacement value of the dwelling unit and for the benefit of the Owner.
- 14.03 **Replacement or Repair of property.** In the event of damage to or destruction of any part of the Common Area facilities or other improvements in the Properties insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XII of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damages or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Assessments made against such Lot Owner in accordance with the provisions of Article VI, Section 5 of this Declaration. In the event of total destruction of all of the improvements in the Properties, the proceeds of the insurance carried by the Association shall be divided proportionately among the Lot

Owners such proportion based upon the original base sales price of each improved Lot at the time it was initially sold by declarant, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Lot is so encumbered.

- 14.04 **Waiver of Subrogation.** As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board of Directors, the owner, the manager and employees of each of the foregoing with respect to any loss covered by such insurance, whether or not caused by negligence or of breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.
- 14.05 **Liability Insurance.** The Association shall obtain comprehensive public liability insurance, including medical payments, liquor liability insurance and malicious mischief, in the amount of \$1,000,000.00 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of the Association or other Lot Owners.

The Association shall obtain liability coverage on members of the Board of Directors for negligent conduct.

- 14.06 **Fidelity Coverage.** The Association shall obtain fidelity coverage against dishonest acts on the part of Directors, managers, employees or volunteers responsible for handling funds collected and held for the benefit of the Lot Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one half(%) times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.
- 14.07 **Other Insurance and General.** The Association may also obtain, through the Board of Directors, Workman's Compensation Insurance and other liability insurance as it deems desirable, insuring each Lot Owner and the Association, Board of Directors and Manager from liability in connection with the Common Area and the premiums for which are Common Expenses included in the Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other dwelling Lot Owners.

All policies shall be reviewed at least annually by the Board of Directors and the limits increased at its discretion.

Notwithstanding any other provision herein, the Association shall continuously maintain in effect such casualty, flood and liability and bonds and other insurance meeting the requirements for planned unit developments established by the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), Housing and Urban Development (HUD), Federal Housing Administration (FHA), Veterans Administration (VA), State of Utah Finance Agency and conventional lending institutions, so long as there are any mortgages on any of the Properties.

- 14.08 **Hazard Insurance.** Each Owner shall be responsible for hazard insurance on the contents of his/her Dwelling Unit.

ARTICLE XV MORTGAGE PROTECTION CLAUSE

- 15.01 **Mortgage Protection.** Notwithstanding any and all provisions hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), Housing and Urban Development (HUD), Federal Housing Administration (FHA), Veterans Administration (VA), State of Utah Finance Agency and conventional lending institutions, and to participate in the financing of the sale of the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provision of the Declaration, these added provisions shall control):

- (a) Each first mortgagee of a mortgage encumbering any Lot, at written request, is entitled to written notification from the Association of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default.
- (b) Each Owner, including every first mortgagee of a mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such mortgage, or by foreclosure of such mortgage or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal".
- (c) Each first mortgagee of a mortgage encumbering any Lot which obtains a title to such Lot pursuant to the remedies provided in such mortgage or by foreclosure of such mortgage, shall take title to such Lot free and clear of any claims of unpaid assessments or charges against such Lot which accrued prior to the acquisition of title to such Lot by the mortgagee.
- (d) Unless at least sixty seven percent (67%) of first mortgagees (based upon one vote for each mortgage owned), and Owners have given their prior written approval, neither the Association or the Owners shall:

- (i) by act or omission seek to abandon, part, alienate, subdivide, release, hypothecate, encumber, sell or transfer the Common Area and the improvements thereon, directly or indirectly which are owned by the Association. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association or the transfer of the Common Area or improvements to an unincorporated association of the Owners in accordance with the Articles of Incorporation of the Association shall not be deemed a transfer within the meaning of this clause);
 - (ii) change the method of determining the obligations, assessments due or other charges which may be levied against a Lot Owner;
 - (iii) by act or omission change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design of the exterior appearance of the dwelling units, the maintenance of common property party walls, party walls or common fences and driveways or the up-keep of lawns and plantings in the Properties;
 - (iv) fail to maintain fire and extended coverage insurance on Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement costs);
 - (v) use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such improvement;
- (e) First mortgagees shall have the right to examine the books and records of the Association during normal business hours.
- (t) All first mortgagees shall be given: (1) thirty (30) days written notice prior to the effective date of any proposed material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association and prior to the effective date of any termination of an agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties; and (2) immediate notice following any damage to the Common Area whenever the cost of reconstruction exceeds TEN THOUSAND (\$10,000.00) DOLLARS and as soon as the Board of Directors learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Properties;
- (g) First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area property and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such property, and the first mortgagee making such payments shall be owed immediate reimbursement therefore from the Association;

- (h) First mortgagees, pursuant to their mortgage, shall have priority over Unit Owners in case of a distribution of insurance proceeds or condemnation awards for losses to or taking of the Common Area property.

In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the GNMA or any similar entity so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first mortgages encumbering Lots with dwelling units thereon. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their dwelling units, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

Neither this Declaration nor the Articles of Incorporation nor the Bylaws of the Association will be amended in such a manner that the rights of any first mortgagee will be adversely affected.

ARTICLE XVI PARTY WALLS

- 16.01 **Party Walls.** There exist party walls between structures on the Lots. The general common law rules with respect thereto apply. Neither Owner of a party wall may interfere with it to the detriment of the other, or do anything to its structure that will weaken it. The common party walls shall not be removed, remodeled, damaged or changed in any manner whatsoever by either Owner, except as approved by the architectural committee. Damages to or destruction of the party walls shall be repaired or replaced at the common, equal expense of each Owner.

ARTICLE XVII LEASING RESTRICTIONS

The following provisions are adopted limiting and restricting the number of Dwelling Units that may be occupied by non-Lot-Owners at Heritage Estates:

- 17.01 **Leasing Prohibited.** The leasing/renting of Dwelling Units or lots at Heritage Estates is prohibited unless the leasing is consistent with the provisions of this Amendment.
- 17.02 **Leasing Permitted in Limited Situations.** No Dwelling Units may be leased within Heritage Estates unless they meet one of the exceptions stated below.
- 17.03 **Board Approval of Leases.** All leases, assignments of leases, and all renewals of such agreements shall be first submitted to the Heritage Estates Board who shall determine compliance with the exceptions contained in this Amendment.

17.04 **Notification of Board.** Any Lot Owner desiring to lease his/her Dwelling Unit or to have his/her Dwelling Unit occupied by a non-Lot-Owner shall notify the Board in writing of their intent to lease their Dwelling Unit. The Board shall maintain a list of those Owners who have notified the Board of Directors of an intent to lease their Dwelling Unit and shall grant permission to Owners to lease their Dwelling Unit if they meet the exceptions stated below.

17.05 **Restrictions Not Applicable.** The leasing restrictions contained herein shall not apply:

- (a) To a Lot Owner who is a member of the military and is temporarily deployed out of the State of Utah, and by reason of the temporary deployment is required to move from the Dwelling Unit during the period of temporary military deployment. The Lot Owner who is temporarily deployed may lease their Dwelling Unit during the period of temporary military deployment. However, if the Lot Owner moves from the Dwelling Unit due to a permanent change of station (PCS), the leasing of the Dwelling Unit shall cease and the rental restrictions contained herein shall continue to apply to that Dwelling Unit and Lot Owner;
- (b) To a parent, grandparent, or child who is a Lot Owner and leases their Dwelling Unit to a family member who is a parent, grandparent, child, grandchild, or sibling of the Owner;
- (c) To a Lot Owner who moves at least 50 miles from the Lot by reason of being relocated by the Lot Owner's employer, if relocation of the Owner is required by the employer. However, if the relocation will be for a period of more than two years and one month, the leasing restriction set forth herein shall be enforced and the Lot Owner may not continue to lease his or her Dwelling Unit;
- (d) To a Lot Owner who moves at least 50 miles away from their Unit due to temporary (less than three years) humanitarian, religious or charitable activity or service and leases their Dwelling Unit with the intent to return to occupy the Dwelling Unit when the humanitarian, religious or charitable service has concluded, or
- (e) To a Lot owned by a trust or other entity created for estate planning purposes, if the trust or other estate planning entity was created for the estate of the current Resident of the Dwelling Unit or the parents, grandparent, child, grandchild, or sibling of the current Resident of the Dwelling Unit.

17.06 **Grandfather Clause.** Those Dwelling Units that are occupied by non-Lot-Owners at the time this Amendment is recorded at the Box Elder County Recorder's Office may continue to be occupied by non-Lot-Owners until the Lot Owner (a) transfers, conveys or otherwise sells the Lot and no longer holds title to the Lot in the Lot Owner's name; (b) occupies the Dwelling Unit; or (3) an officer, Owner, member, trustee, beneficiary, director, or person holding a similar position of Ownership or control of an entity or trust that holds an Ownership interest in the Lot, transfers the Lot or occupies the Dwelling Unit. Those Lots identified on Exhibit "D", attached, are currently occupied by non-Lot-

Owners and are the only Lots within the Association wherein non-Lot-Owners may reside as provided herein.

- 17.07 **Transfer of Unit.** For purposes of subparagraph 17.06, a transfer occurs when one or more of the following occurs:
- (a) the conveyance, sale, or other transfer of a Unit by deed;
 - (b) the granting of a life estate in the Unit; or
 - (c) if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12- month period.
- 17.08 **Tracking.** The Board of Directors shall create, by rule or resolution, procedures to determine and track the number of rentals and Units in Heritage Estates subject to the provisions described in paragraphs 17.05 and 17.06 above, and shall ensure consistent administration and enforcement of the rental restrictions in this Amendment.
- 17.09 **Short-term Rentals Prohibited.** Notwithstanding any other language in this Article XVII, no Owner may lease a Unit for a term of less than six (6) months. Nightly and weekly rentals are strictly prohibited.
- 17.10 **Rental Unit Defined.** As used herein, "Rentals" or "Rental Unit" means a Unit owned by an Owner is occupied by one or more individuals while, at the same time, the Unit Owner does not occupy the Unit as the Owner's primary residence.
- 17.11 **Renting Defined.** As used herein, "Renting" or "Leasing" (or a variation of these words) means a Unit that is owned by an Owner that is occupied by one or more non-owners while no Owner occupies the Unit as the Owner's primary residence. The payment of remuneration to an Owner by a non-Owner shall not be required to establish that the non-Owner is leasing a Unit. Failure of a non-Owner to pay remuneration of any kind to the Owner shall not be considered when determining if a Unit is a Rental Unit.
- 17.12 **Non-Owner Defined.** As used herein, "Non-Owner" means an individual or entity that is not an Owner.
- 17.13 **Occupied Defined.** As used herein, "Occupied" means to reside in the Unit for ten (10) or more days in any thirty (30) day period. A Unit is deemed to be occupied by a non-Owner if the Unit is occupied by someone other than the Unit Owner.
- 17.14 **Household Composition Defined.** No rule shall interfere with the freedom of the occupants of Dwelling Units to determine the composition of their households, except that the Amendment limits residency in a Dwelling Unit to a single family and the Association shall have the power to limit the total number of occupants permitted in each

Dwelling Unit on the basis of the size and facilities of the Dwelling Unit and its fair share use of the common areas and the health and safety of the residents.

17.15 **Single Family Defined.** The term "Single Family" shall have that meaning set forth in Article I of the Definitions.

17.16 **No Leasing Individual Rooms.** When leasing is permitted herein, no daily or weekly rentals shall be permitted, nor may an Owner or tenant lease individual rooms to separate persons or lease less than the entire Lot.

ARTICLE XVIII GENERAL PROVISIONS

18.01 **Enforcement.** This Declaration, the Articles of Incorporation and the Bylaws may be enforced by the Association as follows:

- (a) Breach of any of the covenants contained in the Declaration or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by an Owner, by the Association or the successor in interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney fees in an amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and Court costs.
- (b) The result of every act or omission whereby any of the covenants contained in this Declaration or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors in interest.
- (c) The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative and none of such remedies shall be deemed exclusive.
- (d) The failure of the Association to enforce any of the covenants contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.
- (e) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not affect or impair the lien or charge of any bona fide first mortgage or Deed of Trust made in good faith and for value on any residential Lot or the improvements thereon, provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a Trustee's Sale or otherwise.

- (f) Any Unit Owner who violates this Amendment shall be subject to a complaint for damages and/or an injunction and order seeking to terminate the lease in violation of this Amendment. If Heritage Estates retains legal counsel to enforce this Amendment, with or without the filing of legal process, the violating Unit Owner shall be liable for all costs and expenses incurred by the Association, including but not limited to attorney fees and court costs incurred by the Board of Directors in enforcing this Amendment.
- 18.02 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provisions which shall remain in full force and effect.
- 18.03 **Term.** The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, perpetually, unless otherwise provided by an appropriate amendment.
- 18.04 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of community recreational facilities and the Common Area. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.
- 18.05 **Amendments.** Except as provided at Article XV and subject to any rights of the VA or the FHA hereunder, this Declaration may be amended only by the affirmative vote or written consent of the Owners holding not less than a majority of the voting power.
- 18.06 **No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public or for any public use. (Except as shown on-the recorded Plat).
- 18.07 **Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.
- 18.08 **Reservation of Easements.** Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control, maintenance and repair of the utilities of adjoining Lot Owners. The lot owners expressly reserve, for the benefit of all of the real property in the Properties, reciprocal easements of access, ingress and egress over all Lots and over

the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including without limitation, for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, for maintenance and repair of any dwelling. Such easements may be used by purchasers and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the Common Area. No Owner of a Lot shall interfere with the established drainage pattern over his/her Lot from adjoining or other Lots. Each Owner of a Lot shall make adequate provisions for drainage in the event he/she changes the established drainage over his/her Lot. For purposes of this Declaration, "established drainage" on any Lot is defined as the drainage pattern and facilities in existence at the time that such Lot is conveyed to a purchaser. In the event that any dwelling unit encroaches upon the Common Area and facilities as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The Lot Owners of each Lot on which there is constructed a dwelling unit along or adjacent to said Lot shall have an easement appurtenant to said Lot over the Lot line to and over the adjacent Lot, for the purposes of accommodating any natural movement or settling of any dwelling unit located on said Lot, any encroachment of any dwelling unit due to minor engineering or construction variances and any encroachment of eaves, roof overhangs and architectural features as part of the original construction of any dwelling unit located on said Lot. The Association further expressly reserves, for the benefit of the Association, its agents and employees, easements of access, ingress and egress over the Lots and Common Area, for the purpose of maintaining, repairing and installing sewer pipelines and laterals in accordance with the provisions of this Declaration and as otherwise provided by law. Each of the Lots and structures thereon shall be and are subject to easements for utilities through, over, under and across said Lots and the structures thereon, including easements for the installation and maintenance of meters for such utilities.

- 18.09 **Notices.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered as provided either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice or to the residence of such person if no address has been given to the Association. Such address may be changed, from time to time, by notice in writing to the Association.

[Signatures on Next Page]

EXHIBIT "A"

Legal Description

ALL OF LOTS 1 THROUGH 14, HERITAGE ESTATES PHASE 1, PERRY CITY SURVEY, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE BOX ELDER COUNTY RECORDER'S OFFICE.

[03-210-0001 through 03-210-0014]

ALL OF LOTS 15 and 16 and LOTS 18 THROUGH 29, HERITAGE ESTATES PHASE 2, PERRY CITY SURVEY, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE BOX ELDER COUNTY RECORDER'S OFFICE.

[03-210-0015 and 2016; 03-210-0018 through 03-210-0029]

ALL OF LOTS 1 THROUGH 41, HERITAGE ESTATES PHASE 3, PERRY CITY SURVEY, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE BOX ELDER COUNTY RECORDER'S OFFICE.

[03-210-0030 through 03-210-0041]

ALL COMMON AREA WITHIN HERITAGE ESTATES PHASES 1, 2 AND 3.

Exhibit "B"

Maintenance Chart

MAINTENANCE AND RESPONSIBILITY CHART

The following chart shows the division of responsibility for maintenance, repair, and replacement of property between the Heritage Estates Homeowners Association and the Lot Owners. The Board shall use its reasonable discretion in determining when to maintain, repair or replace those items set forth herein. Please refer to Heritage Estates Declaration for specific explanations.

	EXTERIOR	HOA	OWNER
I.	Maintenance, repair and replacement of roof shingles.	X	
2.	Maintenance, repair and replacement of roof underlayment on each Dwelling Unit (felt and plywood) due to normal wear and tear. (any structural maintenance, repairs or replacement not included herein is the responsibility of the homeowner unless otherwise covered by the Association's insurance).	X	
3.	Maintenance, repair, and replacement of the exterior of each Dwelling Unit, including stucco and brick (but excluding the backing behind each of these exterior finishes).	X	
4.	Maintenance, repair, and replacement of outside secondary water spigots.	X	
5.	Maintenance, repair, and replacement of driveways, front steps, porches, individual walkways, and patios.	X	
6.	Maintenance, repair, and replacement of rain gutters and down spouts.	X	
7.	Maintenance, repair, and replacement of all structural components of the home, including but not limited to framing, insulation, rafters, beams, water barriers, plywood or other backing to stucco, brick, concrete foundations, and patios.		X
8.	Maintenance, repair, and replacement of doors, hinges, frames, thresholds, locks, and doorbells.		X
9.	Maintenance, repair, and replacement of garage floors, garage doors, and garage door frames.		X
10.	Maintenance, repair, and replacement of windows (including glass), shutters, sliding glass doors, French doors, screens, and frames.		X
II.	Maintenance, repair, and replacement of window wells.	X	
12.	Maintenance, repair, and replacement of exterior garage lights and yard lights.	X	
13.	Maintenance of gas and electricity connections from the meters to each individual unit.		X
14.	Maintenance of culinary water system from the outside entry through the foundation throughout the unit. This includes outside faucets and hose bibs. Any damage caused by this portion of water system is the liability of unit owner .		X
15.	Maintenance, repair, and replacement of phone lines, TV cables, air conditioning, and satellite dishes.		X
16.	Maintenance, repair, and replacement of all Unit owner improvements, such as skylights, windows, attic vents, fans, heat tape, ornamental railings, window well covers, and similar items.		X

	INTERIOR	HOA	OWNER
17.	All interior painting, decorations, and furnishings from the inside of the unfinished walls and ceilings. This includes all appliances, such as dishwashers, garbage disposals, ranges, refrigerators, microwaves, furnaces, exhaust fans, attic vents, air conditioners, water heaters, and telephone and computer networks.		X
18.	Maintenance, cleaning, and repair of venting and fireplaces.		X
19.	Maintenance, repair, and replacement of the electrical system from the city electric meter to the breaker panel and to all outlets, including switches and light fixtures.		X
20.	Maintenance, repair, and replacement of plumbing fixtures, such as sinks, basins, toilets, and all interior pipes and valves.		X
21.	Repair of cracks or other damage to interior walls, floors, or ceilings caused by normal unit settling.		X
22.	Repair of damage resulting from static water or seepage of water from any underground source, except water from sprinkler system failures.		X
23.	Repair of damage resulting from surface water.		X
24.	Repair of damage resulting from seepage of water from sprinkler system failures.	X	
25.	Damages under \$10,000 (or whatever the Association's insurance deductible is) = Individual Owner's H06 Insurance Policy Damages over \$10,000 = Heritage Estates Master Policy Insurance	X	X

	GROUNDS	HOA	OWNER
26.	Maintenance of lawn and the maintenance and replacement of original trees, shrubs and lawn curbing.	X	
27.	All flowers abutting a unit.		X
28.	Maintenance and utilization of sprinkler system within the Association.	X	
29.	Snow removal: driveways, individual walkways and Common Area walkways.	X	

	OTHER	HOA	OWNER
30.	Maintenance and repair of water system and sewer system from the city water meter to the entrance to the exterior wall of each unit.		X
31.	Any damage to a unit or common area, not otherwise covered by insurance, caused by a contractor hired by an Owner.		X
32.	Any damage in, on, or to a unit is the sole responsibility of the Owner, except as otherwise stated herein.		X
33.	Drainage system, including the sub-surface drainage system serving the Common Areas.	X	

Exhibit "C"

BYLAWS

BYLAWS OF HERITAGE ESTATES OWNERS' ASSOCIATION

ARTICLE I GENERAL PLAN OF OWNERSHIP

- 1.01 **Name.** The name of the corporation is HERITAGE ESTATES OWNERS' ASSOCIATION, hereinafter referred to as "Association". The principal office of the Association shall be located in Perry, Box Elder County, State of Utah.
- 1.02 **Bylaws Applicability.** The provisions of these Bylaws are applicable to the cluster housing development subdivision known as HERITAGE ESTATES located in the city of Perry, Box Elder County, State of Utah ("the Properties").
- 1.03 **Personal Application.** All present and future Owners and their tenants, future tenants, employees and any other person that might use the facilities of the Properties in any manner, are subject to the regulations set forth in these Bylaws and in the Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for Heritage Estates, A Cluster Housing Development Subdivision ("the Declaration"), recorded in the Office of the Box Elder County Recorder on June 10, 1998 as entry number 112628. 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 II VOTING RIGHTS, QUORUM AND PROXIES

- 2.01 **Voting Rights.** Membership and voting rights of the Association shall be as provided in the Declaration and Articles of Incorporation.
- 2.02 **Majority of Quorum.** Unless otherwise provided in these Bylaws or the Declaration, any action which may be taken by the Association may be taken by a majority of a quorum of the voting power of the Members of the Association.
- 2.03 **Quorum.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least a majority of the voting power of the total Membership of the Association shall constitute a quorum of the Membership. Members present at a duly called or held meeting at which a quorum is present may continue to do business until

adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

- 2.04 **Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary at or before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease after completion of the meeting for which the proxy was filed and upon conveyance by the Member of his Lot.

ARTICLE III ADMINISTRATION

- 3.01 **Association Responsibilities.** The Association shall have the responsibility of administering the Properties, approving the annual budget, establishing and collecting all assessments and arranging for any management of the Properties.
- 3.02 **Place of Meetings of Members.** Meetings of the Members shall be held on the Properties or such other suitable place as close thereto as practicable in the city of Perry, Box Elder County, State of Utah, convenient to the Owners as may be designated by the Board of Directors.
- 3.03 **Annual Meeting of Members.** The annual meetings of the Association shall be held at the time and location identified by the Board of Directors. At each annual meeting there shall be elected, by ballot of the Members, one member of the Board of Directors in accordance with the requirements of Section 4.04 of these Bylaws. At each annual meeting a new election will be held to elect a Director for a term of three years to replace the Director whose term expires. Unless a member of the Board of Directors resigns before the expiration of his term of office, each Director 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 Director elected to fill a vacancy created by the resignation of his predecessor 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. Each first mortgagee of a Lot in the Properties may designate a representative to attend all annual meetings of the Members.
- 3.04 **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 Directors or upon a petition signed by Members holding at least fifteen percent (15%) of the voting power 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. No business shall be transacted at a special meeting except as stated in the notice, unless by consent of those Members holding at least four fifths (4/5ths) of the voting powers of the Association, either in person or by proxy. Each first mortgagee of a Lot in the Properties may designate a representative to attend all special meetings of the Members.
- 3.05 **Notice of Meetings of Members.** It shall be the duty of the secretary to give notice of each annual or special meeting to each member either in person or by mail, stating the purpose thereof as well as the day, hour and place where it is to be held. Such notice shall

also be delivered at least, ten (10) days but not more than sixty (60) days prior to such meeting. The mailing of a notice, postage prepaid, shall be considered notice served, after said notice has been deposited in a regular depository of the United States mail.

- 3.06 **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 five (5) days not more than thirty (30) 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. Such adjourned meetings may be held without notice thereof as provided in this Article III except that notice shall be given by announcement at the meeting at which such adjournment is taken. If a meeting is adjourned for more than thirty (30) days, notice of the adjourned meeting shall be given as in the case of an original meeting.
- 3.07 **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 Directors; (g) unfinished business; and (h) new business. Meetings of Members shall be conducted by the officers of the Association in order of their priority.
- 3.08 **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 as authorized by the Revised Nonprofit Corporations Act, UCA 16-6a-101 et al.
- 3.09 **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.
- 3.10 **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 IV BOARD OF DIRECTORS

- 4.01 **Number and Qualifications.** The property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of at least three (3) persons, each of whom, must be an Owner of a Lot in the Properties. The Board of Directors may

increase, by resolution, the authorized number of members of the Board of Directors; provided, however, that the Owners shall have the sole right to elect the new Board members. Directors shall not receive any stated salary for their services as Directors; provided, however, that: (1) nothing herein contained shall be construed to preclude any Directors from serving the Association in some other capacity and receiving compensation thereof; and (2) any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

4.02 **Powers and Duties.** The Board of Directors 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. The Board of Directors shall not enter into any service contract for a term in excess of one (1) year without the approval of a majority of Owners.

4.03 **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 Directors 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 Directors.
- (b) To conduct, manage, and control the affairs and business of the Association and to make and enforce such rules and regulations therefor as may be consistent with law, with the Articles of Incorporation and these Bylaws, as the Board of Directors 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 Section 3.2 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 Directors, 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 therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities therefor, subject to the approval of a quorum of the Members.
- (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 appliances furnished for the maintenance, improvement, or 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 Directors is hereby authorized to incur any and all expenses for any of the foregoing purposes and to 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. All such assessments shall be subject to the approval of a quorum of the Membership. The funds collected by the Board of Directors from the Members, attributable for replacement reserves, for maintenance, recurring less frequently than annually and for capital improvements shall, at all times, be held in trust 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 Directors, 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 Directors and other interested parties, in accordance with the provisions of the Declaration, the Board of Directors 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, if deemed advisable by the Board of Directors. The Board of Directors shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board of Directors 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 Directors 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, subject to the approval of the Members.
- (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, 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 Directors may deem necessary for the management of the Properties, which Rules and Regulations shall become effective and binding after: (1) they are adopted by a majority of the Board of Directors at a meeting called for that purpose, or by the written consent of such number of Directors 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. 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 procedures 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.

4.04 **Election and Term of Office.** At each annual meeting of the Members, new Directors 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 Directors is not elected thereat, the Board of Directors may be elected at a special meeting of the Members held for that purpose. At each annual meeting a new election will be held to elect a Director for a term of three years to replace the Director whose term expires. Each Director 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 Director may be reelected and there shall be no limitation on the number of terms during which he shall serve.

- 4.05 **Books, Review of Records.** The Board of Directors 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 review of such books and records. A copy of each such review shall be delivered to a Member within thirty (30) days after the completion of such review, upon written request from said Member. A balance sheet and an 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 annual balance sheet and an annual operating statement.
 - (b) The operating statement shall include a schedule of assessments received or receivable itemized by Lot number and by the name of the person or entity assessed.
- 4.06 **Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director 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 Director, or in case the Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place. The Director elected to fill a vacancy will serve the remaining portion of that term.
- 4.07 **Removal of Director.** At any regular or special meeting of the Members duly called, any one or more of the Directors 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 Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. If more than one Director is to be removed at any one time, each Member may vote for or against such removal of each of the Directors. Where the entire Board of Directors is not removed at one time, no Director 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 Directors. If any or all of the Directors are so removed, new Directors may be elected at the same meeting. Notwithstanding the foregoing, any Director who has been elected to office solely by the votes of Members (Pursuant to Section 4.4 of these Bylaws) 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.
- 4.08 **Organization Meeting.** The first regular meeting of a newly elected Board of Directors shall be held within ten (10) days of election of the Board of Directors, at such place as shall be fixed and announced by the Directors at the meeting at which such Directors

were elected, for the purpose of organization, election of officers and the transaction or other business. No notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a majority of the whole Board of Directors shall be present.

- 4.09 **Other Regular Meetings.** Other regular meetings of the Board of Directors 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 Directors provided, however, that such meeting shall be held not less frequently than quarterly. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least seventy-two (72) hours prior to the date named for such meeting.
- 4.10 **Special Meetings.** Special meetings of the Board of Directors shall be open to all Members and may be called by the President (of, if he is absent or refuses to act, by the Vice President) or by any two (2) Directors. At least seventy-two (72) hours' notice shall be given to each Director, personally or by mail, telephone or telegraph, which notice shall state the time, place (as herein above 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 Director has been absent from any special meeting of the Board of Directors, an 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 Director, as required by law and as provided herein.
- 4.11 **Waiver of Notice.** Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time and place thereof. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held after regular call and notice, of a quorum be present, and if, either before or after the meeting each of the Directors 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.
- 4.12 **Quorum and Adjournment.** Except as otherwise expressly provided herein, at all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors 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.

- 4.13 **Action without Meeting.** The Directors 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 Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.
- 4.14 **Fidelity bonds.** The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.
- 4.15 **Committees.** The Board of Directors, 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 Directors.

ARTICLE V OFFICERS

- 5.01 **Designation.** The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer and an Assistant Secretary, and such other officers as, in their judgment, may be necessary. The officers, President, Vice President and Treasurer shall be Directors.
- 5.02 **Election of Officers.** The officers of the Association shall be elected by the members of the Board of Directors at their first meeting after the annual meeting of the Association. Any vacancy in an office shall be filled by the remaining members of the Board of Directors at a regular meeting or special meeting called for such purpose.
- 5.03 **Removal of Officers.** Upon an affirmative vote of a majority of the entire Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose. Any officer may resign at any time by giving written notice to the Board of Directors 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 Directors shall not be necessary to make it effective.
- 5.04 **Compensation.** Officers, agents and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board of Directors. 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.

- 5.05 **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 Directors. 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 Section 4.15, 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 Association. The President shall, subject to the control of the Board of Directors, 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 Directors or these Bylaws.
- 5.06 **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 are able to act, the Board of Directors shall appoint some other member of the Board of Directors 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 Directors or these Bylaws or the Articles of Incorporation of the Association.
- 5.07 **Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association at the principal office of the Association, or at such other place as the Board of Directors may order. The Secretary shall keep in safe custody and shall have charge of such books and papers as the Board of Directors 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 Directors 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 Directors.
- 5.08 **Treasurer.** The Treasurer shall have responsibility for 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 Directors. The Treasurer shall co sign all checks and promissory notes on behalf of the Association as may be ordered by the Board of Directors, in accordance with the Declaration, shall render to the President and Board of Directors, 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 Directors or by these Bylaws.

**ARTICLE VI
AMENDMENTS TO BYLAWS**

- 6.01 These Bylaws 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.

**ARTICLE VII
INDEMNIFICATION OF DIRECTORS AND OFFICERS**

- 7.01 Except to the extent that such liability or damage or injury is covered by insurance proceeds, the Board of Directors may authorize the Association to pay expenses incurred by or to satisfy a judgment or fine rendered or levied against, a present or former Director, officer, committee member or employee 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, committee member or employee; provided, however, the Board of Directors determines, in good faith, that such Director, officer, committee member or employee 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 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, committee member or employee, and the term "person" where used in the foregoing section, shall include the estate, executor, administrator, heirs and legatees or devisees of such person.

**ARTICLE VIII
DISPUTE RESOLUTION**

- 8.01 **Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Association, Owners, all person's subject to these Bylaws, and any person not otherwise subject to these Bylaws who agrees to submit to this Section (collectively the "Bound Parties"), agree to encourage the amicable resolution of disputes between the Bound Parties or involving enforcement of the provisions of these Bylaws, the Declaration and any Rules and Regulations adopted by the Association, and to avoid the emotional and financial cost of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party, including without limitation, claims, grievances or disputes ("Claims") arising out of or relating to the violation, interpretation, application or enforcement of these Bylaws, the Declaration, the Association rules, or the Articles of Incorporation, except those Claims exempted in Section 8.02, shall be subject to the procedures set forth in this Article VIII.

8.02 **Exempt Claims.** The limitations in this Article IX pertaining to exhausting administrative remedies shall not apply to the following Claims ("Exempt Claims"):

- (a) Any lien, claim, action or complaint wherein the Association or the Board alleges against a Unit Owner the nonpayment of Common Expenses, whether by special assessment or any other form of nonpayment of funds owed to the Association; and
- (b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce its Rules and its Declaration; and
- (c) Any suit between Owners seeking redress on the basis of a claim which would constitute a course of action under the laws of the State of Utah in the absence of a claim based on the Declaration, Bylaws, Articles or Rules of the Association, if the amount in controversy exceeds \$5,000.00; and
- (d) Any fines assessed by the Association.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 8.03, but there shall be no obligation to do so.

8.03 **Mandatory Procedures For All Other Claims.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than a Claim exempted from this provision by Section 8.02, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

- (a) **Notice.** In the event that any Claimant shall have a grievance against any Respondent, said Claimant shall set forth said grievance or complaint in writing (the "Notice") and shall deliver the same to the Respondent, stating plainly and concisely:
 - (i) the nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim and the provisions of these Bylaws, the Declaration, the Rules, the Articles of Incorporation or other authority out of which the Claim arises; and
 - (ii) the basis of the Claim (i.e., the provisions of the Declaration, Bylaws, Rules or Articles triggered by the Claim); and
 - (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and
 - (iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

- (b) **Response.** Within ten (10) days of receiving the Notice from Claimant, the Respondent shall set forth a response in writing (the "Response") and shall deliver the same to the Claimant, stating plainly and concisely:
- (i) those facts and/or allegations contained in Claimant's Notice with which Respondent agrees and disagrees, and a statement of the facts and allegations related to the grievance as understood and believed by Respondent; and
 - (ii) those provisions of the Declaration, the Bylaws, the Rules, the Articles of Incorporation or other authority out of which the Claim arises which Respondent understands applies to and controls the resolution of the Claim; and
 - (iii) what Respondent is willing to do or not do to resolve the Claim; and
 - (iv) that Respondent wishes to resolve the Claim by mutual agreement with Claimant and is willing to meet in person with Claimant at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.
- (c) **Negotiation.** Each Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any party, accompanied by a copy of the Notice, the Board (if not involved in the dispute as either a Claimant or Respondent) may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the parties and to the welfare of the Community.
- (d) **Meeting.** In the event that the cause of said grievance or complaint is not rectified by the parties within twenty (20) days from the date of the receipt of Respondent's response, within ten (10) days from the date of expiration of said initial twenty (20) day period, a time and place mutually acceptable to the Claimant and the Respondent shall be established for a meeting between the Claimant and the Respondent.
- (e) **Resolution or Litigation.** At such meeting, the Claimant and Respondent shall be entitled, but not required, to be represented by counsel. The parties, and/or counsel for the Claimant and counsel for the Respondent shall attempt to reach an amicable solution to the grievance or complaint. In the event that the parties are not able to reach such a solution within thirty (30) days from the date of the meeting between the Claimant and the Respondent, the Claimant shall then be entitled to proceed to have the matter judicially determined. Any resolution by the parties shall be reduced to writing and signed by each party or the party's legal representative prior to the end of the thirty (30) day period referred to herein.

(f) **Exhaustion of Remedies Required.** All grievances and complaints of Claimants shall follow procedure outlined and set forth herein prior to the commencement of any litigation relative to said grievances and complaints. However, if a Respondent fails to provide the written response required within ten (10) days, or if either party refuses to meet in good faith within the time frames set forth herein to discuss resolution of the grievance or complaint, the non-offending party shall be released from the obligation to comply with this Article IX and may seek judicial relief without the need to wait for additional time periods to expire.

8.04 **Allocation of Costs of Resolving Claims.** Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 8.03, including the fees of its attorney or other representative.

8.05 **Enforcement of Resolution.** If the parties agree to resolve any Claim through negotiation in accordance with Section 8.03 and any party thereafter fails to abide by the terms of such agreement, then any other party may file suit to enforce such agreement without the need to again comply with the procedures set forth in Section 8.03. In such event, the party taking action to enforce the agreement shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement, including without limitation attorney fees and court costs.

ARTICLE IX MEMBERSHIP IN THE ASSOCIATION

9.01 **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 per lot owned. 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.

9.02 **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.

ARTICLE X MISCELLANEOUS

10.01 **Definitions.** The capitalized words herein shall have the same meaning as set forth in Article I of the Declaration.

10.02 **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.

- 10.03 **Fiscal Year.** The fiscal year of the Association shall be determined by the Board of Directors and having been so determined, is subject to change from time to time as the Board of Directors shall determine.
- 10.04 **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 of ownership of any Lot 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.
- 10.05 **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.

Exhibit "D"

Lot 8, Phase 1
575 West 2350 South
Perry Utah, 84302
(Owner: Sambamuthi)

Lot 33, Phase III
2355 South 525 West
Perry Utah, 84302
(Owner: Hoopes)